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No. _____

In The

Supreme Court of the United States

October Term, 1997

IN RE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS,

Respondent.

CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and GREENPARK INTERNATIONAL, LTD.,

Real Parties in Interest.

On Petition For Writ Of Prohibition And/Or Mandamus To The United States District Court For The Northern Mariana Islands

PETITION FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

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QUESTIONS PRESENTED

Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. § 1801) requiring the United States to "respect the right of self-government guaranteed by this Covenant" (Article I, § 105) and requiring that the federal courts accord the same respect to the courts of the Northern Mariana Islands as to the courts of the several States (Article IV).

1. Did the United States District Court for the Northern District of the Mariana Islands ("District Court") breach the Covenant and impermissibly offend the sovereignty of the Commonwealth of the Northern Mariana Islands ("CNMI") and exceed its jurisdiction by staying civil contempt proceedings pending in the CNMI Probate Court against Respondent Chung Po Yang ("Chung")?

2. Did the District Court have jurisdiction to remove a cross-claim pending in the CNMI Probate Court against Chung and the other real parties in interest when Chung, the removing party, had not complied with the removal provisions of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (9 U.S.C. § 205 of the Federal Arbitration Act) and had waived arbitration?

3. Did the District Court disobey the doctrine of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976) by refusing to abstain from exercising jurisdiction (if any) over probate and contempt proceedings in the CNMI Probate Court?

PARTIES

The parties are Petitioner, Bank of Saipan, Executor of the Estate of Larry Lee Hillblom, Respondent, the United States District Court for the Northern Mariana Islands, and the Real Parties in Interest Chung Po Yang, Stephen J. Schwartz, Peter J. Donnici, William A. Robinson and Greenpark International, Ltd.

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A copy of the unpublished order of the United States Court of Appeals for the Ninth Circuit is annexed hereto. (App. 1.) A copy of the unpublished order of the United States District Court for the Northern Mariana Islands denying Petitioner's motion to dismiss or remand, dated November 8, 1997 is annexed hereto. (App. 2.) A copy of the District Court's unpublished decision after order of November 8, 1997, is annexed hereto. (App. 4.) A copy of the District Court's unpublished order granting Chung's motion to stay litigation and compel arbitration is annexed hereto. (App. 13.) The District Court's unpublished order denying Petitioner's motion for clarification and reconsideration is annexed hereto. (App. 16.)

JURISDICTION

Jurisdiction of this Court is invoked under the All Writs Act, 28 U.S.C. § 1254(1). Respondent Chung relied on the Convention on Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 9 U.S.C. §§ 201 *et seq.*, and the general removal statutes, 28 U.S.C. §§ 1441, 1446, to invoke subject matter jurisdiction in the District Court.

STATUTORY PROVISIONS INVOLVED

The statutes involved are: 28 U.S.C. § 1441(b)[1], 28 U.S.C. § 1446(a)[2], 9 U.S.C. §§ 3, 4, 202, 203, 205[3], and the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801.[4]

STATEMENT OF THE FACTS

Larry Lee Hillblom ("Hillblom") died in an airplane crash at sea in May, 1995, and his body was never recovered. He was domiciled in the Commonwealth of the Northern Mariana Islands ("CNMI"). The CNMI Probate Court admitted Hillblom's will to probate on July 17,

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[1] In pertinent part, Section 1441(b) provides: "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties."

[2] In pertinent part section 1446(a) provides: "A defendant or defendants desiring to remove any civil action . . . from a State court shall file in the district court of the United States for the district and division in which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action."

[3] The relevant text of these sections, respectively, is quoted hereafter, at pp. 8, 9-10, 12, *infra*.

[4] Relevant quotations from the text of the Covenant are set forth at p. 8, *infra*. The full text is reprinted as the Note to 48 U.S.C.A. § 1801.

1995. The will named the Petitioner, Bank of Saipan ("Petitioner"), as Executor of the Hillblom Estate ("Estate"). Notice to Creditors was published on July 7, 1995. Chung Po Yang, ("Chung"), a resident of Hong Kong, Stephen J. Schwartz, Peter J. Donnici, and William A. Robinson each filed creditors' claims against the Estate.

The Estate is very large and complex. Two of the Estate's largest assets are shares of stock in two closely-held air express delivery companies of which Hillblom was an original co-founder and stockholder, "DHL Corporation" ("DHLC"), a domestic United States company incorporated in California, and DHL International ("DHLI"), an international company incorporated in Bermuda.

In September 1995, DHLI sought to and eventually did purchase the Estate's DHLI shares for an amount in the multiple millions in accordance with a right-of-first-refusal provision in a shareholders' agreement to which Hillblom was a party. Other Estate assets include stock, real estate, and other interests in the CNMI, Vietnam, Hong Kong, Guam, the Republic of Palau, France, Philippines and the United States.

Chung and Robinson, among the real parties in interest and former business associates of Hillblom, filed claims against the Estate on September 1, 1995 asserting an assumed equitable lien arising from alleged contractual rights with respect to the Estate's DHLC shares. (App. 27.) Chung thereafter filed another claim against the Estate in 1996 for $300,000 based on his averments that he had made a loan to the Estate in that amount.

(App. 29.) The remaining real parties in interest also filed separate claims in the probate action, asserting contractual rights in the Estate's interest in DHLI and other companies. All those claims arose from numerous transactions and agreements entered into among the decedent and one or more of the real parties in interest between 1989 and 1992.

On July 16, 1997, Chung filed an action in the CNMI Superior Court against the Estate, outside of the probate proceedings, reasserting the same claims to proceeds from the possible sale of the DHLC shares as well as an alleged loan claim for $300,000. No mention was made in those actions of any arbitration clause in any of the agreements. (App. 31.)

On July 16, 1997, Petitioner filed a cross-claim in the probate action against the probate claims brought by Chung and the other real parties in interest seeking damages, declaratory relief, accounting and the imposition of a constructive trust. (App. 35.)

After Petitioner filed its cross-claim, Chung asserted a baseless "equitable interest" in the Estate's DHLI shares to thwart the sale of the Estate's DHLI shares to DHLI. On September 5, 1997, the CNMI Probate Court issued an order enjoining Chung "from taking any action that places, or threatens or may threaten to place a question, cloud, lien, or encumbrance on clear title to the shares of the Estate's DHLI stock or interfering in any manner in the Executor's efforts to conclude the settlement and closing of the sale of the Estate's DHLI shares promptly so the proceeds may be received by the Estate without further delay." (App. 44.)

The same September 5 order also ordered Chung to appear personally at a hearing on October 16, 1997, to testify about the purported factual basis for his "equitable interest" in the DHLI shares and to permit the Court to decide whether Chung's clouding the title to the DHLI stock was an effort to pressure Petitioner into abandoning its determination of the validity of Chung's claims against the Estate and the Estate's claims against Chung. (App. 43.) Chung did not appear as ordered on September 5 or thereafter. Although enjoined from doing so, Chung continued to interfere with the Executor's efforts to conclude the sale of DHLI's stock by asserting additional legally frivolous claims.

When Chung failed to appear in response to the Court's order, the CNMI Probate Court held Chung in civil contempt and ordered him to show cause why sanctions should not be imposed against him at a hearing set for November 6, 1997. (App. 46.)

On October 30, 1997, after Chung had been found in civil contempt, but before the date for hearing sanctions against him, Chung filed a Notice of Removal in the United States District Court for the Northern Mariana Islands ("District Court") to remove Petitioner's July 16, 1997 cross-claim against him. (App. 50.) Chung cited a general removal statute (28 U.S.C. § 1446) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention", 9 U.S.C. §§ 201 *et seq.*). Chung alleged that the Petitioner's cross-claim against him arose from five agreements between Chung and Hillblom, two of which contained clauses providing for arbitration in Hong Kong. (App. 50.) The other real parties in interest did not join in Chung's removal notice; instead,

after the Notice was filed, some of them personally or by representatives wrote informal letters of consent to removal to the District Court; one consented only to removing the case to Hong Kong. (App. 61.)

On October 31, 1997, Chung filed a motion in the District Court to stay litigation in the CNMI Probate Court and a motion to compel arbitration, although he had never referred to nor requested arbitration in the 26 months that he had been litigating in the CNMI superior courts, both in and out of probate. (App. 65.)

On November 6, 1997, Chung failed to appear before the CNMI Probate Court for a hearing on sanctions to be imposed for his civil contempt. He simultaneously sought an order from the District Court to show cause why a temporary restraining order should not issue staying the litigation in the CNMI Probate Court. (App. 74.)

On November 7, 1997, the District Court held an expedited hearing on the motions. The following day, it issued a two-page order denying the Petitioner's motion to dismiss and/or remand, stating that a more detailed decision would follow. (App. 2.) The District Court declared that the Petitioner's cross-claim against Chung and the other real parties in interest had been properly removed and that "[t]hose portions of Commonwealth Superior Court [Probate] No. 95-626A that relate to the Executor Bank of Saipan's July 16, 1997, 'cross-claim' against respondent Chung and others were automatically stayed at removal. . . . " The District Court also declared that "the contempt proceeding against Chung was also automatically stayed by operation of law" and that the CNMI Probate Court "lacks jurisdiction to consider either

the 'cross-claim' or the contempt, unless and until there is a further order of this court." (App. 2-3.)

Petitioner thereupon moved the District Court to clarify and to reconsider its order and opinion, on the grounds (among others) that its order was in excess of its subject matter jurisdiction, contrary to controlling statutory and decisional law, and impermissibly infringed CNMI's sovereignty. On January 13, 1998, the District Court denied Petitioner's motion and further interfered with CNMI probate proceedings by stating that "[t]he central theme of that order [of November 8, 1997] was that anything to do with the Hillblom-Chung agreements had either been removed from, or stayed in, the [CNMI Probate Court]. (App. 18.) The District Court also stated that "all of the various contempt sanctions being urged upon the [CNMI Probate] Court by the Executor implicated Chung's rights under the agreements . . . were . . . stayed," and the "[r]esolution of any other dispute or legal proceeding which intrinsically involves the Hillblom-Chung agreements must be stayed pending the outcome of the arbitration." (App. 20.)

On February 12, 1998, Petitioner filed its Petition for Writ of Prohibition and/or Mandamus in the United States Court of Appeals for the Ninth Circuit. (App. 85.) The Ninth Circuit summarily denied the Petition on April 30, 1998. (App. 1.)

REASONS FOR GRANTING THE WRIT

I. THE DISTRICT COURT BREACHED THE COVENANT AND OFFENDED CNMI'S SOVEREIGNTY BY DECLARING A STAY OF CONTEMPT PROCEEDINGS AGAINST CHUNG

The Commonwealth was created by the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant"). The Covenant was approved by Congress on March 24, 1976. P.L. 94-241, 90 Stat. 263 (codified as 48 U.S.C. § 1801)). The Covenant defines the relationship between the Commonwealth and the United States. The Articles of the Covenant explicitly state that the United States shall "respect the right of self-government guaranteed by this Covenant" (Article I, § 105) and that "the relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, . . . and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings, except as otherwise provided in this Article. . . . " Article IV, § 403(a). This Court has not construed the Covenant in a removal case.

It is vitally important to the citizens of the Commonwealth that the federal courts respect the integrity of the Commonwealth's sovereignty and the power of its courts in its developing judicial system to enforce its own orders. The District Court's interference with civil contempt proceedings pending against Chung in the CNMI

Probate Court violated the Commonwealth's sovereignty, contrary to the intent of the Covenant and to this Court's decision in *Juidice v. Vail*, 430 U.S. 327, 336 (1977) ("federal-court interference with a State's contempt process is 'an offense to the State's interest . . . ' " [citation omitted]).

II. THE DISTRICT COURT DID NOT HAVE JURISDICTION TO STAY THE CONTEMPT PROCEEDING AGAINST CHUNG

Chung's sole basis for removal jurisdiction was the Convention on Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 9 U.S.C. § 205 of the Federal Arbitration Act ("FAA").[5] The CNMI Probate Court's civil contempt order could not be removed to the District Court because that order was outside the Convention which explicitly limits the subject matter of the Convention to "[a]n arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as *commercial*, including a transaction, contract or agreement described in section 2 of this Title [9 U.S.C. § 2], falls under the

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[5] But for 9 U.S.C. § 205, the FAA "does not create any independent federal question jurisdiction," and it "provides for an order compelling arbitration only when the federal district court would have jurisdiction over a suit on the underlying dispute. . . . " *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 n. 32 (1983).

Convention." (Emphasis added, 9 U.S.C. § 202). A contempt citation is obviously not a "commercial" agreement. Instead, it is an assertion of Commonwealth sovereignty.

The Convention is also explicit that removal must be sought before commencement of trial. 9 U.S.C. § 205. Chung had been tried and found guilty of contempt before he sought removal.

Contrary to the District Court, the FAA did not impose an automatic stay on contempt proceedings pending in the CNMI Probate Court. The stay provided by 9 U.S.C. § 3 applies only to a suit or proceeding which is pending before the court that is asked to refer an issue to arbitration.[6] Probate proceedings were not pending in the District Court and the contempt proceeding had not been removed. The contempt proceeding pending in the CNMI Probate Court could not have been tried in the federal courts, nor was it removed or removable from the CNMI Probate Court to the District Court. *See, e.g., Kansas Pub. Employees Retirement Sys.*, 77 F.3d 1063, 1069 (3th Cir.) *cert.*

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[6] Section 3 provides, in pertinent part: "If any suit or proceeding be brought in any of the courts in the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, *the court in which such suit is pending*, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, *providing the applicant for the stay is not in default in proceeding with such arbitration*." (Emphasis added.)

denied, ___ U.S. ___, [117 S. Ct. 359] (1996) (removal statute only commands state court to stay the case that was actually removed to the federal court). Moreover, Chung was in default within the meaning of 9 U.S.C. § 3.

III. THE DISTRICT COURT DID NOT HAVE REMOVAL JURISDICTION OVER PETITIONER'S CROSS-CLAIM

Federal courts do not have power over matters of probate and estate administration. *Markham v. Allen*, 326 U.S. 490, 494 (1946). The decedent's shares in DHLI and DHLC to which Chung's and the other real parties in interests' claims were related were assets in the control of the CNMI Probate Court. As *Pufahl v. Parks' Estate*, 299 U.S. 217, 226 (1936) teaches: "Where . . . a *res* has come into the possession and under the control of a state court, one having a right to go into the federal court . . . cannot obtain a judgment or decree entitling him to interfere with the administration of the *res* by the court having its possession."

Therefore, unless federal jurisdiction was explicitly conferred upon the District Court by the Convention, 9 U.S.C. § 205, and Chung had fulfilled all of the statutory conditions precedent to invoking § 205, Petitioner's cross-claim could not be removed from the CNMI Probate Court. Removal statutes are strictly construed against removal to respect sovereignty. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941). Chung did not comply with the procedural requisites of removal, and he had waived his right to arbitration.

A. Chung Did Not Comply with Statutory Conditions Precedent to Removal

The removal provision of the Convention (9 U.S.C. § 205) provides:

> Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, *the defendant* or *the defendants* may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. . . . (Emphasis added.)

Chung was not a "defendant" within the meaning of the statute. As a claimant in the probate proceedings, he was like a plaintiff. A cross-claim defendant is not a "defendant" within the meaning of the removal statutes. *Shamrock Oil & Gas Corp.*, 313 U.S. at 106 (where a counterclaim is asserted against a plaintiff, that plaintiff cannot "avail himself of a right of removal conferred only on a defendant who has not submitted himself to the jurisdiction" of the state court). Chung had submitted himself to CNMI jurisdiction by filing his claim in the CNMI Probate Court and by litigating outside of probate in the CNMI courts for years.

The failure of all of Chung's co-cross-claim "defendants" to join in his removal request was fatal, a principle

that has been established for almost one hundred years. *Chicago, Rock Is. & P.R. Co. v. Martin*, 178 U.S. 245, 247-48 (1900). Although removal statutes have been amended from time to time, that basic principle has never been changed.

Joinder is not accomplished by stating in a removal notice that the other defendants do not object or consent to removal to the federal court. *Roe v. O'Donohue*, 38 F.3d 298, 301 (7th Cir. 1994). Lower federal courts have consistently held that joinder requires all co-defendants either to sign the original petition or notice of removal or to voice such consent by filing a separate pleading expressly consenting to join or, at least, by filing affidavits of formal consent to removal. *E.g., Martin Oil Co. v. Philadelphia Life Ins. Co.*, 827 F. Supp. 1236, 1239 (N.D. Va. 1993); *Creekmore v. Food Lion, Inc.*, 797 F. Supp. 505, 507 (N.D. Va. 1992); *Moody v. Commercial Ins. Co. of Newark, N.J.*, 753 F. Supp. 198, 200 (N.D. Tex. 1990). None of the co-cross-claim "defendants" filed any formal document joining the removal request. Chung merely belatedly submitted informal letters from co-cross-"defendants" or their representatives; one such defendant consented solely to remove the cross-claim to Hong Kong. (App. 61.)

Chung's notice of removal was also fatally defective because he sought only to remove a sliver of the proceedings before the CNMI Probate Court. The general federal question removal statute incorporated into the Convention (28 U.S.C. § 1441(b)) provides in pertinent part:

> Any *civil action* of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws

> of the United States *shall be* removable. (Emphasis added.)

Courts of appeals hold that removal of a "civil action" does not mean a part of an action or proceeding; the removal statutes envision removal of the entire action. *Arango v. Guzman*, 621 F.2d 1371, 1375-76 (5th Cir. 1980); *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095, 1098-99 (9th Cir. 1990). In addition to incorporating general removal statutes, Section 205 (9 U.S.C.) specifically provides that if an "action or proceeding" relates to an arbitration agreement, the defendants "may . . . remove such action or proceeding"; the implication is that the entire action, not a piece of the action or proceeding, is removable.

B. Chung Waived His Right, If Any, To Remove

After steadily litigating for 26 months in the CNMI courts, Chung had his belated arbitration inspiration. It was nothing more than a transparent ploy to avoid impending punishment for contempt of which he had been found guilty, the sanctions for which could have included destruction of the claim that he had filed in probate. His conduct is inexcusable. He could have asserted his alleged right to arbitration in the CNMI courts years before, and he did not do so; he could have initiated arbitration proceedings without the assistance of either the Commonwealth or federal courts, and he did not do that either. The prejudice to the Estate, other creditors, the heirs and the CNMI Probate Court itself is manifest: Chung's conduct has disrupted the contempt proceedings, interfered with the orderly administration

of the Estate, waylaid discovery, squandered the time of both federal and state courts, and wasted assets of the Estate.

Federal courts of appeals have frequently refused to permit litigants to misuse the power to compel arbitration as a means of forum shopping or manipulating the power of federal courts to escape unfavorable results that they had justly deserved. *E.g., Menorah Ins. Co. v. INX Reinsurance Corp.*, 72 F.3d 218, 221 (1st Cir. 1995); *Kramer v. Hammond*, 943 F.2d 176, 180 (2d Cir. 1991); *Jones Motor Co. v. Chauffeurs, Teamsters & Helpers Local Union No. 633*, 671 F.2d 38, 43 (1st Cir), *cert. denied*, 459 U.S. 943 (1982).

The Circuits have regularly held that conduct like Chung's constitutes a waiver of arbitration. *E.g., Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 926-27 (3d Cir. 1992); *St. Mary's Medical Ctr. v. Disco Aluminum Prods. Co.*, 969 F.2d 585, 588-89 (7th Cir. 1992); *S&H Contractors, Inc. v. A.J. Taft Coal Co.*, 906 F.2d 1507, 1514 (11th Cir. 1990); *Van Ness Townhouses v. Mar Indus. Corp.*, 862 F.2d 754, 759 (9th Cir. 1988); *National Found. For Cancer Research v. A.G. Edwards & Sons, Inc.*, 821 F.2d 772, 774-75 (D.C. Cir. 1987).

The Convention does not preclude application of the waiver doctrine. The Convention incorporates the FAA, except where the FAA conflicts with the Convention's contrary specific provisions. Senate Comm. on Foreign Relations, Foreign Arbitral Awards, S. Rep. No. 702, 91st Cong. 2d Sess. 5 (1970), U.S. Code Cong. & Admin. News 1970, p. 3601; 9 U.S.C. § 208. No conflict appears between the Convention and the waiver doctrines applicable to the FAA.

Nothing in the legislative history of the Convention suggests that Congress intended to give a non-waivable removal right to defendants who invoke the Convention. Ambassador Richard D. Kearney, Chairman of the Secretary of State's Advisory Committee on Private International Law, explained to the Senate Foreign Relations Committee that the Convention effected only "minor changes" in the FAA to "take care of certain technical problems arising out of differences between the [FAA] and the Convention." S. Rep. No. 702 at 5, 7. Neither he nor anyone else who testified during the hearings said that waiver principles applicable to other sections of the FAA would not be applicable to the Convention.

IV. EVEN IF SUBJECT MATTER JURISDICTION EXISTED, THE DISTRICT COURT ERRED IN FAILING TO ABSTAIN TO PROTECT THE COMMONWEALTH'S SOVEREIGNTY

Nothing in the Convention withdraws the power of a district court to abstain from exercising federal jurisdiction when abstention is reasonably necessary to respect sovereignty and to preserve the sensitive balancing of interests that is required to maintain our dual sovereignty system.

In *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976), this Court emphasized the importance of federal courts' abstaining from exercising jurisdiction to prevent unnecessary collisions with sovereignty, especially when federal intervention would be "disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

424 U.S. at 814. The same dignity should be accorded Commonwealth sovereignty.

It is vitally important to the Commonwealth that federal courts do not interfere with its constructing a coherent system of probate administration and that federal courts do not intervene in its attributes of sovereignty, including the power of its courts to enforce its own orders. Permitting such intervention has "an impermissibly disruptive effect on state policy for the management of those fields. . . . " (*Colorado River Water Conservation Dist.*, 424 U.S. at 815.)

The principles discussed in *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964) are instructive here, even though *Donovan* involved a state court's interference with a federal court. After an action had begun in the federal court, the defendant obtained an injunction from a state court to prevent the plaintiff from continuing to prosecute the federal court action. The Supreme Court of Texas held that the state court could do so, and a Texas intermediate appellate court cited petitioners for contempt in trying to continue pursuit of their action in federal court. This Court held that the state court was without power to restrain petitioners from pursing their federal action:

> Early in the history of our country the general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings. That rule has continued substantially unchanged to this time. An exception has been made in cases where a court has custody of property, that is, proceedings *in rem* or quasi-*in rem*.

377 U.S. at 412.

This Court has said in such cases that the state or federal court having custody of such property has exclusive jurisdiction to proceed. *Pufahl*, 299 U.S. at 226. Here, it is the federal court that has refused to abstain from interfering with probate and contempt proceedings in the Commonwealth. Probate proceedings are *in rem*; assets that are the subject of the cross-claim are being administered by Petitioner under the CNMI Probate Court's supervision. The CNMI Probate Court thus had exclusive jurisdiction to proceed with administering the Estate without interference from the District Court.

CONCLUSION

The sole means to confine the District Court to its jurisdiction and to prevent its continuing affront to the Commonwealth's sovereignty is this Court's issuance of a prerogative writ. The Commonwealth courts cannot correct the District Court's usurpation of power. The Ninth Circuit has summarily denied relief. The interference with the CNMI Probate Court cannot be cured by a possible appeal from a District Court judgment confirming or vacating an arbitration award. The issuance of an extraordinary writ is appropriate because the circumstances of this case are extraordinary.

For the foregoing reasons, Petitioner prays:

1. That a writ of prohibition and/or mandamus issue from this Court directed to the United States District Court for the Northern District of the Mariana Islands and to the Honorable Alex Munson, Judge of said Court, requiring said Honorable Alex Munson, to show

cause on a day to be fixed by this Court why prohibition and/or mandamus should not issue from this Court directing said Honorable Alex Munson to vacate the order, dated November 8, 1997, denying Petitioner's motion to dismiss or remand, the order granting Chung's motion to stay litigation and compel arbitration, dated January 13, 1998, and the order denying Executor's motion for clarification and reconsideration, dated January 13, 1998.

2. That Petitioner shall have such additional relief and process as may be necessary and appropriate in the premises.

Dated: May 21, 1998.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BANK OF SAIPAN, Executor of the Estate of Larry Lee Hillblom, Petitioner, vs. UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS; Respondent, CHUNG PO YANG; et al., Real Parties in Interest.	No. 98-70172 DC# CV-97-63-ARM Northern Mariana Islands ORDER (Filed Apr. 30, 1998)

Before: BRUNETTI, RYMER, and T.G. NELSON, Circuit Judges

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

IN RE CLAIM OF THE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM, Claimant v. CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and, GREENPARK INTERNATIONAL, LTD., Respondents	Civil Action No. 97-0063 ORDER DENYING EXECUTOR'S MOTION TO DISMISS OR REMAND (Filed Nov. 08, 1997)

THIS MATTER came before the court at 2:00 p.m., Friday, November 7, 1997, for hearing of expedited motions. Claimant appeared by and through its attorneys, Richard W. Pierce, Eduardo A. Calvo, and Kathleen V. Fisher; respondent Chung Po Yang appeared by and through his attorneys, Conrad K. Harper, Willow Sanchez, Lecia Eason, and Patricia Halsell; and, Charles R. Rotbart appeared on behalf of his client, Milagros Feliciano.

THE COURT, having considered the written and oral arguments of counsel, rules as follows: Executor's motion to dismiss or remand is DENIED. The court finds that this matter was properly removed pursuant to 28 U.S.C. § 1441 et seq. and 9 U.S.C. § 205. Those portions of Commonwealth Superior Court No. 95-626A that relate to

Executor Bank of Saipan's July 16, 1997, "cross-claim" against respondent Chung and others were automatically stayed at removal, as provided by 28 U.S.C. § 1446(d), which directs that, upon filing of a notice of removal and notice to the clerk of the state court, "the State court shall proceed no further unless and until the case is remanded." As a consequence of the removal and the operation of § 1446(d), the contempt proceeding against Chung was also automatically stayed by operation of law. The Superior Court lacks jurisdiction to consider either the "cross-claim" or the contempt, unless and until there is a further order of this court. Accordingly, it is not necessary for the court to consider Chung's motion for a temporary restraining order.

Due to the severe time constraints imposed upon the court by the timing of this matter, a more complete discussion of the court's reasoning will issue separately.

This order shall be immediately filed and sent by facsimile to local counsel and as a courtesy to the Commonwealth Superior Court.

IT IS SO ORDERED.

DATED this 8th day of November, 1997.

/s/ Alex R. Munson
ALEX R. MUNSON
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

IN RE CLAIM OF THE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM,	)	Civil Action No. 97-0063
Claimant	)	DECISION AFTER ORDER OF NOVEMBER 8, 1997
v.	)	
CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and, GREENPARK INTERNATIONAL, LTD.,	)	(Filed Nov. 13, 1997)
Respondents	)	

THIS MATTER came before the court at 2:00 p.m., Friday, November 7, 1997, for hearing of expedited motions.[1] On Saturday, November 8, 1997, the court issued its order denying the Executor's motion to dismiss or remand, finding that removal to this court was proper and properly effectuated pursuant to 28 U.S.C. § 1441 et seq. and 9 U.S.C. § 201 et seq. The court declined to consider respondent Chung's motion for a temporary restraining order, for the reason that the removal automatically divested the Commonwealth Superior Court of

[1] Moving papers were filed Thursday, November 6, 1997, the court met with the parties that afternoon, and this motion was heard the next day.

jurisdiction[2] to hear the removed matter, and indicated that this written decision would follow.

On October 30, 1997, this matter was removed by respondent Chung from the Commonwealth Superior Court, wherein it was denominated Civil Action No. 95-626A. In a surfeit of caution, Chung also sought from this court a temporary restraining order, staying all further proceedings in the Superior Court which concerned the removed matter. The Executor and Ms. Feliciano opposed the removal as having been defective procedurally and as being merely a bad faith attempt to frustrate the contempt power of the Commonwealth Superior Court.

On short notice, this court was asked 1) to read and familiarize itself with numerous documents relating to the estate proceedings in Superior Court, which by common agreement are exceedingly complex, protracted, and

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[2] This court is abundantly aware of, and sensitive to, the need of all courts to be able to vindicate through contempt proceedings transgressions which have occurred before them. *See, e.g., Juidice v. Vail*, 430 U.S. 336, 97 S.Ct. 1211 (1977). Here, though, the contempt proceedings are inseparable from the substance and merits of Chung's removed claims. It should be noted, however, that the court was cognizant of a significant reality as it determined that removal of Chung's claims was proper (and that the concomitant automatic stay of the on-going contempt proceedings in Superior Court was of little long-term consequence): the probate proceedings and the contempt arising therefrom remain before the Commonwealth Superior Court, to which the parties will again return at some point in the future. At worst, the automatic stay occasioned by the removal may defer, but does not ultimately defeat, exercise by the Commonwealth Superior Court of its contempt powers.

bitter, 2) to issue an order staying the Superior Court from acting on the eve of its possible imposition of sanctions under its previously-issued contempt order against Chung, and 3) to consider after removal any contractual right Chung may possess to have his claims determined by an international arbitrator, as per Chung's agreements with Hillblom.

The written and oral characterizations of the parties as to what has transpired so far, who is at fault, what the true motives of each of the parties are, and what actions this court should take are, perhaps not surprisingly, wildly at odds with one another. However, the initial question before this court is simply whether or not Chung's removal of this action met all the procedural requirements. If it did not, this matter would have been immediately remanded to the Commonwealth Superior Court. As explained below, though, this court has determined that the removal was properly effectuated. Accordingly, the court will on December 12, 1997,[3] consider Chung's motion to compel arbitration.

The removing defendant has the burden of proving that removal is proper. *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97, 42 S.Ct. 35, 37 (1921). There is a strong presumption against removal jurisdiction; the defendant has the burden of persuasion that removal was proper. *Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 934 (9th Cir. 1993); *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990). As

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[3] Changed by stipulated request of the parties from the original hearing date of November 28, 1997.

stated earlier, after a case has been removed "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C. § 1446(d).

On Thursday, October 30, 1997, respondent Chung filed in this court his notice of removal, as well as, on Friday, October 31, 1997, a motion to stay the proceedings in the Superior Court. Removal was pursuant to 9 U.S.C. § 201 et seq. (the Federal Arbitration Act) and 28 U.S.C. § 1441 et seq. The matter sought to be removed by Chung was identified as "the Cross-Claim brought by Bank of Saipan, as Executor of the Estate of Larry Lee Hillblom (the "Executor"), against Respondents Chung, Schwartz, Donnici, Robinson and Greenpark International Ltd." The Executor's "cross-claim"[4] had been filed in Superior Court on July 16, 1997.

The Executor's July 16, 1997, cross-claim asked the Superior Court to adjudicate, among other claims, whether Chung had paid all amounts due Hillblom for the purchase of Hillblom's stock interest in Monterrey Investments Limited, a British Virgin Islands company that was at the time of their agreement a holding company of DHL International Ltd.

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[4] It appears to the court that the Executor's filing in Superior Court against Chung was a counterclaim, and not a cross-claim. Cross-claims are claims made by a party against a co-party, not against an adverse party. Fed.R.Civ.P. 13(g); 13 James Wm. Moore, et al. *Moore's Federal Practice* § 13.60 et seq. (3rd ed. 1997). Nevertheless, to avoid adding confusion, throughout this decision the court will adopt the characterization of its filing that was used by the Executor.

The arrangement for Hillblom to sell and Chung to buy the Monterrey shares was set out in a series of five agreements: 1) the Agreement re: Monterrey Investments Limited (December 31, 1989) (in which Chung agreed to buy all of Hillblom's interest in Monterrey Investments Limited for US$226,000,000 plus interest); 2) the Monterrey Investment Agreement (December 7, 1990); 3) the Agreement as to Acquisition and Distribution of Certain Assets (December 7, 1990); and, 4) two Payment Agreements (executed in April, 1995).

The terms of the Monterrey Investment Agreement (¶ 9) and the Agreement as to Acquisition and Distribution of Certain Assets (¶ 11) (both dated Dec. 7, 1990) require binding arbitration in Hong Kong of "any dispute, controversy, or claim arising out of or relating to" the agreements. Chung claims to have done all that he was required to do under the agreements described above and he filed a Request for Arbitration with the International Chamber of Commerce on October 30, 1997.

Based on the relief sought by the cross-claim filed in Superior Court, and thus at issue in this court after removal (although in ways, by relationships, and in scope not yet wholly made clear by the parties) are: 1) the September 1, 1995, claim of a lien by Chung and Robinson on certain Class A and Class B shares of DHL Corporation, 2) the September 5, 1995, claim by Chung, Robinson, and Greenpark, International, Ltd. to enforce rights to purchase shares in DHL International, Ltd., and 3) Chung's May 24, 1996, claim for repayment of $300,000 plus interest.

The removal statutes are contained in 28 U.S.C. §§ 1441-1452. Section 1441 sets forth four essential elements for a proper removal: 1) only a "civil action brought in a State court" may be removed, 2) the civil action must be one "of which the district courts of the United States have original jurisdiction," 3) only the "defendant or defendants"[5] may remove, and 4) the action must be removed to the district court for the district and division embracing the state court action. Of these four elements, only the last is uncontested.

Federal law applies to determine whether a party is a "defendant," and federal courts apply a functional test in making this determination. *See, generally,* 16 James Wm. Moore, et al. *Moore's Federal Practice* § 107.11[1][b][i] (3rd ed. 1997). The Executor first argues that respondent Chung, by virtue of the claims he filed (either singly or with others) with the Estate, is a plaintiff in the probate proceeding and that, as such, removal to district court was not available to him.[6] If this assertion is correct, the filing of the Executor's cross-claim does not render Chung a defendant who can avail himself of the removal procedure.

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[5] During the hearing on Friday, November 7, 1997, counsel for respondent Chung filed written notices from the four other named respondents stating that they joined in the removal filed by Chung.

[6] The Executor argues that, for the same reason, the other named respondents are likewise "plaintiffs," and cannot join in the removal of this action from Superior Court. (Mem. of P. & A. in Supp. of Mot. to Dismiss or Remand, Nov. 6, 1997.)

Resolution of this issue is complicated by the fact that the removal has arisen in the context of the probate of an estate, rather than in a typical plaintiff-defendant civil lawsuit, and because removal by Chung is based on the Executor's cross-claim, rather than a complaint. However, the court is not persuaded that the mere filing of a claim in a probate proceeding renders the filer a "plaintiff." The filer does not voluntarily elect, as a "plaintiff," to invoke a probate court's jurisdiction. The filer has no choice of forum: a claim *must* be filed with the probate. Under Title 8, Commonwealth Code § 2107, Chung is an "interested person" in the Superior Court probate proceeding, and not a plaintiff (as distinguished, for example, from a person who sues the administrator or executor of an estate in tort, who would indeed be a true "plaintiff"). Once the Executor filed its cross-claim (which should perhaps have been filed as an entirely separate civil action against Chung), the court is persuaded and finds that, given the peculiar circumstances of this case, Chung was then sufficiently "defendant"-like, and his claims and the cross-claim sufficiently analogous to a "civil action," to justify his petition for removal to this court.

The Executor next argues that Chung could remove only the *entire* probate proceeding below, and not just the part affecting his claims. The removal must therefore be defeated, according to the Executor, because this court certainly cannot conduct the probate. With this latter assertion the court readily agrees: this court cannot conduct a probate proceeding. *See, e.g., Markham v. Allen*, 326 U.S. 490, 494, 66 S.Ct. 296, 298 (1946). However, Chung's

claims and the cross-claim arise out of a discrete transaction (albeit with several constituent parts). If the court ultimately concludes that Chung is entitled to arbitration of his agreements with Hillblom, those certain agreements can be excised from the probate estate until the arbitration has been concluded. The fact that Chung's right to remove unavoidably affects the probate proceedings in the Superior Court cannot factor into this court's decision. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217-218, 105 S.Ct. 1238, 1241 (1985) (holding that the Arbitration Act requires district courts to compel arbitration even where the result would be the possibly inefficient maintenance of separate proceedings in different forums). Once the arbitration has ended and a decision has been rendered, the Superior Court can resume its administration of this portion of the probate estate. Removal of the cross-claim against Chung does not present an insoluble problem.

After the analysis above, the only remaining element necessary for a proper removal is that the action or proceeding removed must be one "of which the district courts of the United States have original jurisdiction." Such jurisdiction is provided by the Federal Arbitration Act, 9 U.S.C. § 201 et seq.

Title 9 U.S.C. § 205 provides in relevant part:

> Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention [on the Recognition and Enforcement of Foreign Arbitral Awards], the defendant or defendants may, at any time before

> the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. (Emphasis added.)

Title 9 U.S.C. § 205 aids respondent Chung in three ways: 1) it provides a basis for this court's jurisdiction due to his claim of an enforceable contractual right to arbitration, 2) the removal was timely because the action or proceeding was removed "before the trial" and, 3) the ground for removal (Chung's claimed contractual right to arbitration) could be, as it was, "shown in the petition for removal," rather than having had to appear on the face of a well-pleaded complaint, as in the usual case. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429 (1987); *Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 934 (9th Cir. 1993).

All four elements of removal having been shown to the satisfaction of the court, the court found that removal was properly effectuated and denied the Executor's motion to dismiss or remand to the Commonwealth Superior Court.

DATED this 13th day of November, 1997.

/s/ Alex R. Munson
ALEX R. MUNSON
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

IN RE CLAIM OF THE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM, Claimant v. CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and, GREENPARK INTERNATIONAL, LTD., Respondents	)	Civil Action No. 97-0063 ORDER GRANTING CHUNG'S MOTION TO STAY LITIGATION AND COMPEL ARBITRATION (Filed Jan. 13, 1998)

THIS MATTER came before the court on Friday, December 19, 1997, for hearing of Chung's motion to stay litigation and compel arbitration. Movant appeared by and through his attorney, Conrad K. Harper; the Executor appeared by and through one of its attorneys, Seth M. Hufstedler, who opposed the motion.

THE COURT, having considered the written and oral arguments of counsel, rules as follows:

The arguments made by the Executor in opposition to Chung's motion to stay litigation and compel arbitration have been previously presented in the Executor's original opposition to the removal and rejected by this court in its order of November 8, 1997, and decision of November 13,

1997. The court will not again consider them.[1] Given the unusual and apparently unique procedural and factual posture of this case, the interests of justice are best served by permitting the arbitration that Hillblom and Chung themselves desired and provided for in their agreements.

There being no legitimate dispute that there is an arbitration agreement, and the Executor, by the sum of its actions to date, having abundantly indicated its refusal to arbitrate, Chung's motion to stay the litigation and compel arbitration is GRANTED. *United Food & Commercial Workers Union v. Alpha Beta Co.*, 550 F.Supp. 1251, 1253 (N.D.Cal. 1982), *aff'd* 736 F.2d 1371 (9th Cir. 1984); *Howard Elec. & Mech. v. Briscoe Co.*, 754 F.2d 847, 849 (9th Cir. 1985) (district court's role limited to determining if arbitration agreement exists; if so, court has little discretion to deny arbitration motion). Accordingly, proceedings in

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[1] However, to the extent that the Executor's waiver argument was not explicitly addressed previously, the court finds that Chung took no actions which were inconsistent with his right to arbitration. A finding of waiver of a contractual right to arbitration is disfavored. *Fisher v. A.G. Becker Paribas Inc.*, 791 F.2d 691, 697 (9th Cir. 1986). Filing a complaint to forestall running of the statute of limitations is not inconsistent with an intent to arbitrate, *Davis Corp. v. Interior Steel Equipment Co.*, 669 F.Supp. 32, 33-34 (D.D.C. 1987), neither is taking limited part in the litigation process, *Howard Fields & Assoc. v. Grand Wailea Co.*, 848 F.Supp. 890, 897-898 (D.Hawaii 1993). As noted in the body of the decision, any harm to the Executor due to the passage of time stems from the Executor's own actions, and do not support its claim of prejudice. *Fisher*, 791 F.2d at 694.

this court are stayed pending the outcome of the arbitration before the International Chamber of Commerce.

IT IS SO ORDERED.

DATED this 13th of January, 1998.

/s/ Alex R. Munson
ALEX R. MUNSON
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

IN RE CLAIM OF THE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM, Claimant v. CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and, GREENPARK INTERNATIONAL, LTD., Respondents	)	Civil Action No. 97-0063 ORDER DENYING EXECUTOR'S MOTION FOR CLARIFICATION AND RECONSIDERATION (Filed Jan. 13, 1998)

THIS MATTER came before the court on Friday, December 19, 1997, for hearing of the Executor's motion for clarification and reconsideration of this court's November 8, 1997 order denying Executor's motion to dismiss or remand, as that order was explained in the written decision of November 13, 1997. Movant appeared by and through its attorneys, Shirley M. Hufstedler and Seth M. Hufstedler; Barry J. Israel, attorney for prospective intervenor Naoko Imeong was heard in support of the motion; and, Chung Po Yang appeared by and through his attorney, Conrad K. Harper, in opposition to the motion.

THE COURT, having considered the written and oral arguments of counsel, rules as follows:

In the court's November 8, 1997 order it denied the Executor's motion to dismiss or remand this matter, and explained its reasoning in a decision issued five days later. The court concluded, under the unusual circumstances of this case, that the Executor's "cross-claim" had been properly removed by Chung from the Commonwealth Superior Court, and that other matters related to the removal were automatically stayed in Superior Court. The Executor now seeks clarification and reconsideration of that order. Specifically, the Executor believes this court 1) should clarify for the Superior Court that that court may continue administering the estate, 2) should clarify that Chung's own claim in the probate action has not been removed, and 3) should reconsider the order staying the contempt proceedings against Chung in the Superior Court. For the following reasons, the motion for clarification and reconsideration is DENIED.

As to the two requests for clarification, the dispositive fact leading this court to deny the motion is that the Superior Court itself has evinced no confusion over its undoubted authority to continue to administer the estate. The Superior Court explicitly recognized that taking further action involving Chung, his claim, or the "cross-claim" during the pendency of this proceeding would be inappropriate if it would frustrate the jurisdiction of this court.[1] From the transcriptions included as part of this

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[1] For the Executor to continue to insist that Chung's own claim was not removed or stayed seems but an attempt to divide the courts, inject even more procedural confusion into the proceedings, and encourage piecemeal litigation in the hopes that a full hearing on Chung's claim, whatever its merits, will be stymied.

motion, it is evident that the Superior Court has no doubt as to its continued estate administration authority or the temporary parameters of that authority insofar as it involves removed and stayed matters. Clarification has not been shown to be necessary.[2]

Next, pursuant to the court's local rules reconsideration of a previous order regarding a non-dispositive motion is appropriate on grounds of 1) a material difference in fact or law from that presented to the court before such decision, which in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or 2) the emergence of new material facts or a change of law occurring after the time of such decision, or 3) a showing of manifest failure to consider material facts presented to the court before such decision.[3] The motion for reconsideration cannot repeat any of the earlier arguments made. Local Rule 7.1.g.

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[2] Movant's professed confusion over the previous order is difficult to take at face value. The central theme of that order was that anything to do with the Hillblom-Chung agreements had either been removed from, or stayed in, the Commonwealth Superior Court. In any event, any uncertainty between the courts can be resolved by on-the-record communications.

[3] By comparison, reconsideration of a dispositive motion under, e.g., Fed.R.Civ.P. 59(e) (motion to alter or amend judgment) or 60(b) (relief from judgment), is available when the court 1) is presented with newly discovered evidence, 2) committed clear error or the initial decision was manifestly unjust, or 3) if there is an intervening change in controlling law. *School District No.1J, Multnomah Co. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The Executor[4] argues that the court manifestly failed to consider material facts in ruling that this matter was properly removed from the Commonwealth Superior Court. However, nothing has been presented in this motion which has not already been presented by the Executor and considered by the court in its first order. As expressed in the earlier decision, the court's primary difficulty in resolving the issues presented by the removal was that the factual and legal situation presented to the court did not lend itself to a routine, straightforward removal analysis. Given that a neatly delineated resolution was impossible, the court attempted to do what it is charged to do: seek to effect the intention of the parties in the pursuit of justice. The court concluded that the contractual expectations of Hillblom and Chung can best be fulfilled by allowing the five agreements to proceed to arbitration in accordance with the parties' original intent, even though only two contain an arbitration clause. It is abundantly clear that the five agreements in

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[4] Although neither party raised the issue, the court questions the standing of the Executor to seek reconsideration of this court's order, which in part had the effect of staying the contempt proceeding in Superior Court. It is the Superior Court's interests, and not the Executor's, which will be vindicated by the contempt proceeding. The Executor's pursuit of the imposition against Chung of the extreme sanction of stripping him completely of all rights he might have by virtue of his agreements with Hillblom seems inappropriate and overreaching. This is particularly so in light of Chung's essentially unchallenged explanation of the chronology of events that led to the finding of contempt against him and of the Executor's alleged participation in those events. Because neither party raised the issue of standing, the court will consider the motion for reconsideration.

essence comprise but one single agreement, which took form and was executed over time. The court concluded previously, as it does again today, that it would be impractical and result in fragmented proceedings to allow only two of the five agreements to be included in the arbitration, when all five are so inextricably bound together. For the same reason, resolution of any other dispute or legal proceeding which intrinsically involves the Hillblom-Chung agreements must be stayed pending the outcome of the arbitration.

And, as stated in the earlier decision, when the automatic stay effected by the removal took force it was – and still remains – the conclusion of this court that the contempt proceedings against Chung in the Commonwealth Superior Court were also stayed. This is because all of the various contempt sanctions being urged upon the Superior Court by the Executor implicated Chung's rights under the agreements sought to be arbitrated. In its previous order the court stated that the contempt proceedings were "automatically stayed." However, whether they were automatically stayed or necessarily stayed (which may be nearer the mark), insofar as they may have affected Chung's contractual right to arbitration they were stayed. In this context, it is well worth re-visiting one point made in the court's previous order: exercise of the Commonwealth Superior Court's contempt powers has merely been deferred until a later date; no action taken by this court in seeing that rights provided by federal law are protected will prevent the Superior Court from completing its contempt proceedings once the arbitration and proceedings in this court have concluded. Were the contempt proceedings not stayed because of

their intertwinement with the removed matters, it appeared likely that this court's removal jurisdiction could be impinged upon and frustrated by simultaneous proceedings in both courts involving Chung. But the most salient fact – and a fact conceded by the Executor at oral argument of this motion – is that the Superior Court itself has evinced absolutely no confusion about the extent of the stay or the exercise of its powers. Again, as shown in the transcriptions made part of this motion, the Superior Court fully shares this court's respect for each court's jurisdictional boundaries, and recognizes the particularly delicate interplay at work here.

By allowing this removal, Hillblom (now through his Estate) and Chung get the benefit of their bargain: arbitration. Chung gains no unfair advantage in either resolution of the parties' rights under the agreements or in forever escaping the contempt powers of the Superior Court. In answer to the claim that the arbitration proceedings may somewhat delay the probate proceedings, the court notes that such a claim is entirely speculative.[5] In any event, the chronology set out before this court makes it appear quite likely that, had the Executor responded in timely fashion to Chung's suggestion that the accountant used by Hillblom and Chung be contacted, and had the Executor dealt with Chung's claim promptly, this matter could have begun moving toward resolution long ago. From all that has been presented

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[5] And not a proper consideration in Federal Arbitration Act cases. *See, Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217-218, 105 S.Ct. 1238, 1241 (1985).

here, this court is persuaded that procedural maneuvering designed to avoid or wholly negate the substance of Chung's claims has led to the greatest delay.

FOR THE FOREGOING REASONS, the Executor's motion to clarify and for reconsideration is denied.

IT IS SO ORDERED.

DATED this 13th day of January, 1998.

/s/ Alex R. Munson
ALEX R. MUNSON
Judge

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EXECUTOR OF THE ESTATE OF
LARRY LEE HILLBLOM

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF THE NORTHERN MARIANA ISLANDS

In re Claim of the BANK OF SAIPAN, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM, Claimant, v. CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON and GREENPARK INTERNATIONAL, LTD., Respondents.	Civil Action No. 97-0063 **DECLARATION OF KATHLEEN V. FISHER IN SUPPORT OF MOTION FOR CLARIFICATION AND RECONSIDERATION OF THE COURT'S ORDER DENYING EXECUTOR'S MOTION TO DISMISS OR REMAND** (Filed Nov. 18, 1997) Date: December 19, 1997 Time: 9:00 a.m. Judge: Honorable Alex Munson

I, Kathleen V. Fisher, declare:

1. I am an attorney, licensed to practice in the State of California, and admitted to this court pro hac vice. I am a member of the firm of Morrison and Foerster, attorneys for the Bank of Saipan, Executor of the Estate of Larry Lee Hillblom. I make this declaration of my own personal knowledge, and if called upon as a witness could and would testify competently to the matters stated herein.

1. Attached as Exhibit A is a true and correct copy of a claim filed by Po Yang Chung in the CNMI Superior Court on September 1, 1995.

2. Attached as Exhibit B is a true and correct copy of a claim filed by Po Yang Chung in the CNMI Superior Court on May 24, 1996.

3. Attached as Exhibit C is a true and correct copy of the Declaration of Po Yang Chung in Support of Certain Claims against the Estate of Larry Lee Hillblom, filed in the CNMI Superior Court on September 29, 1996.

4. Attached as Exhibit D is a true and correct copy of Po Yang Chung's Supplemental Declaration in Support of Claims against the Estate of Larry Lee Hillblom, filed in the CNMI Superior Court on October 9, 1996.

5. Attached as Exhibit E is a true and correct copy of a complaint against the Estate filed by Po Yang Chung and others in the CNMI Superior Court on July 16, 1997.

6. Attached as Exhibit F is a true and correct copy of a complaint against the Estate filed by Po Yang Chung in the CNMI Superior Court on July 16, 1997.

7. Attached as Exhibit G is a true and correct copy of the Executor's Memorandum of Points and Authorities Regarding Sanction to be Imposed Against Po Yang Chung, filed in the CNMI Superior Court on October 23, 1997.

8. Attached as Exhibit H is a true and correct copy of the Executor's Reply Memorandum of Points and Authorities Regarding Sanction to be Imposed on Po Yang Chung, filed in the CNMI Superior Court on November 5, 1997.

9. Attached as Exhibit I is a true and correct copy of the Declaration of Eduardo A. Calvo in Support of Executor's Recommended Sanctions to Be Imposed Against Po Yang Chung, filed in CNMI Superior Court on October 23, 1997.

I declare under penalty of perjury that the foregoing is true and correct. Executed in the Commonwealth of the Northern Mariana Islands on November 18, 1997.

/s/ Kathleen V. Fisher
Kathleen V. Fisher

[Exhibits C, D, E, G, H and I Omitted]

EXHIBIT A

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Attorneys for Claimants
Cheiro's Consulting Co.,
William A. Robinson and
Chung Po Yang

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF LARRY LEE HILLBLOM, Deceased.	CIVIL ACTION NO. 95-626 **NOTICE OF CLAIM RE: LIEN ON 1,118 CLASS "A" AND 388,160 CLASS "B" SHARES OF STOCK IN DHL CORPORATION** (Filed Sep. 1, 1995)

TO: BANK OF SAIPAN, Executor of the Estate of Larry Lee Hillblom

COMES NOW, Claimants Cheiro's Consulting Co., a Hong Kong corporation, William A. Robinson and Chung Po Yang (hereinafter collectively referred to as "Claimants"), on behalf of themselves and each of them individually to file this claim for recognition of their contractual rights with respect to 1,118 Class "A" shares of stock and 388,160 Class "B" shares of stock in DHL Corporation, a California corporation, which shares were formerly owned by Larry Lee Hillblom and are now part of the assets of the Estate of Larry Lee Hillblom.

Prior to his death, Larry Lee Hillblom owned 10,823 shares Class "A" shares and 800,000 Class "B" shares of DHL Corporation. Of these shares, 1,118 shares of Class "A" shares and 388,160 Class "B" shares were purchased from funds in which Claimants had an interest with the understanding that such shares, and all shareholder rights pertaining thereto, would remain in the name of

Larry Lee Hillblom. There was a further understanding, however, that in the future, if such shares were sold, redeemed or otherwise transferred, the proceeds of the sale or transfer of the 1,118 Class "A" and 388,160 Class "B" shares would paid to Claimants or if this was not practical or possible, the shares themselves would be transferred to Claimants according to their individual contractual rights therein.

The individual Claimant's rights to the 1,118 Class "A" shares are as follows:

Cheiro's Consulting Co.	=	388 shares
William A. Robinson	=	207 shares
Chung Po Yang	=	523 shares

In addition, Mr. Chung Po Yang has contractual rights to 388,160 of the 800,000 Class "B" shares presently held in the Estate.

Dated: September 1, 1995.

Respectfully submitted,

Eason & Halsell

by: /s/ Lecia M. Eason
Lecia M. Eason
Attorney for the Claimants
Cheiro's Consulting Co.,
William A. Robinson and
Chung Po Yang

EXHIBIT B

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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF LARRY LEE HILLBLOM, Deceased.	CIVIL ACTION NO. 95-626 **NOTICE OF CLAIM** (Filed May 24, 1996)

TO: WILLIAM I. WEBSTER, Special Administrator of the Estate of Larry Lee Hillblom
BANK OF SAIPAN, Executor of the Estate of Larry Lee Hillblom

Chung Po Yang, by and through his attorneys, Eason and Halsell, files this claim against the Estate for repayment of the principal sum of $300,000 plus a commercially reasonable rate of interest. The basis of this claim which arose after the Estate was opened is as follows:

1. On or about June 5, 1995, Continental Airlines sent a Semi-Annual Dilution Notice to Air Partners. On July 14, 1995, a second such Notice was sent by Continental to Air

Partners. On July 18, 1995, Air partners sent a memorandum to the partners notifying them that funds must be received by July 26, 1995.

2. Peter J. Donnici, the agent for notice purposes for Air Partners, had learned from Joe Waechter, Vice-President of the Bank of Saipan, that the Estate wished to exercise its rights but did not have the money to do so.

3. Donnici asked claimant if claimant would send the money necessary to exercise the Estate's rights on the call and claimant agreed.

4. On July 20, 1995, therefore, claimant transferred $300,000 to Air Partners' account on behalf of Hillblom's [the Estate's] limited partnership interest so that the Estate could exercise its rights on the call.

Claimant seeks the principal amount of $300,000 from the Estate plus a commercially reasonable rate of interest.

Dated: May 24, 1996.

Respectfully submitted,
Eason & Halsell

by: /s/ Lecia M. Eason
Lecia M. Eason
Counsel for Claimant
Chung Po Yang

EXHIBIT F

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Attorneys for Claimant
Chung Po Yang

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

CHUNG PO YANG, Plaintiff, vs. BANK OF SAIPAN, Executor of THE ESTATE OF LARRY LEE HILLBLOM, Deceased. Defendant.	CIVIL ACTION NO. 97-0782B **COMPLAINT FOR DECLARATORY RELIEF** (Filed July 16, 1997)

Now comes Chung Po Yang, by and through his attorneys, Eason and Halsell, and alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 7 CMC §2421.

PARTIES

2. The Plaintiff, Chung Po Yang ("Po Chung"), is an individual residing in Hong Kong.

3. Defendant BANK OF SAIPAN ("Bank" or "Executor") is a corporation created and existing under the laws of the Commonwealth of the Northern Mariana Islands and is the executor of the Estate of Larry Lee Hillblom ("Hillblom"), who died on May 21, 1995. The Bank was appointed executor on July 17, 1995.

FACTS

4. Hillblom was a limited partner in and owned a percentage of Air Partners L.P. ("Air Partners"). Air Partners, in turn, owns securities of Continental Airlines, Inc. ("Continental"). Air Partners' Investment in Continental resulted in each of the limited partners having corresponding rights to Continental shares and Continental warrants.

5. Hillblom died in May 1995. The Bank was appointed as Executor pursuant to Hillblom's will.

6. Plaintiff was one of Hillblom's oldest friends and long-time business associates.

7. Before his death, expecting Continental to issue a call for additional equity contribution, Hillblom asked Plaintiff to loan him funds to finance the purchase of the Continental shares. Plaintiff agreed to make the funds available when the call came. Hillblom promised to repay the money to Plaintiff when he could.

8. On or about June 5, 1995, Continental Airlines sent a Semi-Annual Dilution Notice to Air Partners. On July 14, 1995, a second such Notice was sent by Continental to Air Partners. On July 18, 1895, Air Partners sent a memorandum to its partners notifying them that funds for the equity contribution must be received by July 26, 1995.

9. Hillblom's copy of that July 18, 1995 memo was received by Peter J. Donnici who, for years, had served as Hillblom's agent for receiving notices from Air Partners. Donnici had learned from Joe Waechter, Vice-President of the Executor Bank, that the Estate wished to exercise its rights but did not have the funds to do so.

10. Knowing of the agreement between Plaintiff and Hillblom, Donnici asked Plaintiff to make good on his promise to Hillblom by loaning $300,000 to the Estate in the event it elected to exercise its right to buy shares under the anti-dilution provision. Plaintiff agreed. While Plaintiff did not set terms or a date for repayment of the money, he did expect that his money would be returned to him with interest whenever the Estate had sufficient excess funds to make repayment.

11. On July 20, 1995, at Donnici's request, Plaintiff transferred $300,000 from his personal account to Air Partners' account on behalf of Hillblom's [the Estate's] limited partnership interest to enable the Estate to exercise its rights on the Continental call.

12. The price to the Estate was approximately $15.00 per share for the 20,757 shares. At that time, the shares were being publicly traded at $37.00 each. The Estate

later sold those shares for $53.50 per share, making a substantial profit.

13. Plaintiff filed a timely claim for his money in the Superior Court probate case designated Estate of Larry Lee Hillblom, Civil Action No. 95-626.

14. Despite Plaintiff's claim, the Defendant has failed and refused to repay Plaintiff the $300,000 plus interest that Plaintiff loaned to the Estate for the purchase of Continental shares.

RELIEF SOUGHT

WHEREFORE, Plaintiff asks this Court to issue a judgment declaring the following:

1. that Plaintiff is entitled to the sum of $300,000.00 in principal;

2. that Plaintiff is entitled to interest and his cost of suit;

3. that Plaintiff is entitled to such other relief as this Court may deem just and appropriate.

Dated: July 15, 1997.

Respectfully submitted,
Eason & Halsell

by: /s/ Lecia M. Eason
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On behalf of THE BANK OF SAIPAN, as Executor of the ESTATE OF LARRY LEE HILLBLOM

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF:	Civil Action No. 95-626
THE ESTATE OF LARRY L. HILLBLOM,	CROSS-CLAIM OF BANK OF SAIPAN, EXECUTOR, TO CLAIM OF CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, AND GREENPARK INTERNATIONAL LTD.
Deceased.	**[FILED UNDER SEAL]**

COMES Now the Bank of Saipan, as Executor of the Estate of Larry L. Hillblom, and submits the following

cross-claims to the claims of Chung Po Yang ("Chung"), Stephen J. Schwartz ("Schwartz"), Peter J. Donnici ("Donnici") and William A. Robinson ("Robinson") filed herein on or about September 1, 1995, September 5, 1995, and May 24, 1996.

THE PARTIES

1. The Bank of Saipan ("Executor"), as Executor of the Estate of Larry L. Hillblom (the "Estate"), is a corporation with its principal place of business in the Commonwealth of the Northern Mariana Islands. The Bank of Saipan was named as the Executor of the will of Larry L. Hillblom, a domiciliary of Saipan who died in an airplane crash on May 21, 1995. The Supreme Court of the Commonwealth of the Northern Mariana Islands issued an Order admitting the will to probate on July 17, 1995.

2. Chung Po Yang is one of the original shareholders in DHL Corporation (DHL) and DHLI, International (DHLI), corporations that Mr. Hillblom founded.

3. Stephen J. Schwartz is an attorney who has performed extensive work for Mr. Hillblom, DHL, DHLI, and other claimants.

4. Peter J. Donnici is an attorney who had performed extensive work for Mr. Hillblom, DHL, DHLI, and other claimants.

5. William A. Robinson is one of the original shareholders in DHL and DHLI, corporations that Mr. Hillblom founded.

6. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Greenpark International Ltd. ("Greenpark") is a Hong Kong corporation, which is a successor to a corporate shareholder of DHL and DHLI. On information and belief, Greenpark is an alter ego for David Allen.

7. On September 1, 1995, Mr. Chung and Mr. Robinson filed a Notice of Claim Re: Lien on 1,118 Class "A" and 388,160 Class "B" Shares of Stock in DHL Corporation. Mr. Schwartz and Mr. Donnici filed a Notice of Claim Re: Lien on 746 Shares of Stock in DHL International Ltd on September 1, 1995. On September 5, 1995, Mr. Chung, Mr. Robinson, and Greenpark filed a Notice of Claim to Enforce Rights to Purchase Shares of Stock in DHL International Limited and Of Claim For Any Contingent Liability. On May 24, 1996, Mr. Chung filed a Notice of Claim for the repayment of the sum of $300,000 plus interest in this court.

FIRST CAUSE OF ACTION

(Against Chung)

8. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1-7 of this complaint.

9. On December 31, 1989, Chung and Mr. Hillblom entered into a written agreement entitled Agreement Re: Monterrey Investments Limited, which provides that Mr. Hillblom would sell his 49% interest in Monterrey Investments Limited to Mr. Chung in exchange for $226,000,000, with interest to be paid at 10% per year.

10. Mr. Hillblom satisfied his contractual obligations by transferring his 49% interest in Monterrey Investments to Mr. Chung.

11. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Mr. Chung has not satisfied his contractual obligations to repay the amount of $226,000,000 with interest due under the Agreement.

12. As a direct and proximate result of the foregoing, the Estate has been damaged.

SECOND CAUSE OF ACTION

(Against All Cross-Defendants)

(Declaratory Relief)

13. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1-12 of this complaint.

14. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Mr. Hillblom and one or more of the cross-defendants entered into agreements, including but not limited to An Agreement As To Acquisition And Distribution Of Certain Assets, and the Monterrey Investment Agreement, for the purchase and distribution of certain of Mr. Hillblom's assets and interests, including Monterrey Investment Limited of which DHLI was a subsidiary. These agreements affected Mr. Hillblom's ownership interests in numerous entities, including but not limited to Dumbleton Properties, Lady Cynthia, Electronic Mail Systems, ARW, Merizo Shores L.P., First Skyline Corp., Ulunaiu

Shores Ltd., Mobile Investments Ltd., and Volcano Point LP. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that cross-defendants played numerous different roles with respect to these companies, including as shareholders or partners, as attorneys for the companies and/or one or more shareholders or partners, as officers and/or directors, and otherwise as employees.

15. An actual controversy has arisen and now exists between the Executor and cross-defendants concerning their respective rights and duties in relation to the above-mentioned agreements and transactions and the assets and ownership interests they affect.

16. The Executor desires a judicial determination of the Estate's rights and duties and the cross-defendants' rights and duties, and a declaration to that effect.

17. Due to the great complexity of the above transactions a judicial declaration is necessary and appropriate at this time to establish the Estate's rights and duties.

THIRD CAUSE OF ACTION

(Against All Cross-Defendants)

(Constructive Trust And Accounting)

18. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1 through 17 of this complaint.

19. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that cross-

defendants have received certain assets, ownership interests, and distributions, some of which may belong to the Estate.

20. The Executor has requested that the cross-defendants convey the appropriate assets and ownership interests to the Estate. In addition, the Estate has sought the distributions, both past and future, it is entitled to receive. Cross-defendants have not conveyed the assets, ownership interests, and distributions to the Estate.

21. Since plaintiff's appointment as Executor, plaintiff has requested an accounting or showing by cross-defendant of the sums actually and honestly due the Estate from the cross-defendant. The Executor has requested that cross-defendants provide the Estate with statement of all assets, ownership interests, and distributions that it is entitled to, now and in the future, as owner.

22. Cross-defendants have not provided the Executor with a full accounting or showing in connection with such an accounting concerning its rights, duties, assets, ownership interests, and distributions.

23. The Executor does not have complete information regarding the assets, ownership interests, and distributions owing to it based on the complex nature of the interests, involving many agreements affecting the ownership of numerous foreign and domestic companies.

FOURTH CAUSE OF ACTION

(Against Donnici and Schwartz)

(Constructive Trust And Accounting)

24. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1 through 23 of this complaint.

25. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Nirada Corporation BV (Nirada), a Dutch company, owns land in Mykonos, Greece and possibly other assets.

26. Upon information and belief, cross-defendants Schwartz and Donnici hold the shares in Nirada in trust for Mr. Hillblom and others.

27. The Executor has requested that cross-defendants convey the Estate's proportion of the above-described shares to the Estate. Cross-defendants have failed to convey the property to the Estate.

28. The Executor has requested that cross-defendants provide the Estate with a statement of all shares or distributions that the Estate is entitled to as rightful owner of Nirada. Cross-defendants have not provided the Executor with full information concerning its interests.

WHEREFORE, plaintiff prays for judgment herein as follows:

1. The Court adjudicate the foregoing cross-claim and enter judgment thereon in an amount to be determined by proof;

2. For a declaration of the Estate's and the cross-defendants' rights and duties under the above-mentioned agreements as well as those not specifically mentioned above or set forth in this complaint and not at present known by the plaintiff that may affect the Estate;

3. For an order declaring that the cross-defendants hold assets, ownership interests, and past and future distributions in trust for the Estate;

4. For an order compelling cross-defendants to convey to the Estate the assets, ownership interests, and distributions it is entitled to as described above as well as such interests not specifically mentioned above or set forth in this complaint and not at present known by the plaintiff that may affect the Estate;

5. For an accounting of all moneys owed to the Estate as set out above as well as those sums not specifically mentioned above or set forth in this complaint and not at present known by the plaintiff;

6. For costs of suit herein incurred; and

7. For such other and further relief as the court may deem just and proper.

Dated: July 16, 1997.

RODNEY JACOB
CALVO & CLARK

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP

By: /s/ Rodney Jacob
Rodney Jacob

Attorneys for Plaintiff
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On behalf of THE BANK OF SAIPAN,
as Executor of the ESTATE OF LARRY
LEE HILLBLOM

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

IN THE MATTER OF:	) Civil Action No. 95-626]
	) /s/ ACC
THE ESTATE OF	) ~~[PROPOSED]~~ ORDER
LARRY L. HILLBLOM,	) REGARDING EXECUTOR'S
	) SUPPLEMENTAL PETITION
Deceased.	) FOR INSTRUCTIONS BY
	) THE EXECUTOR AND
	) SUPPLEMENTAL ACTIVITY
	) REPORT REGARDING
	) SETTLEMENT OF DHLI
	) ARBITRATION AND
	) ORDER TO SHOW CAUSE
	) [PO YANG CHUNG]
_____	) (Filed Sept. 5, 1997)

On September 4, 1997, the Executor's Supplemental Petition for Instructions by the Executor and Supplemental Activity Report Regarding Settlement Of DHLI Arbitration ("Petition") came on for hearing. Ms. Lecia Eason, of Eason and Halsell, was present but instructed by her client, Mr. Po Yang Chung, that she did not have authority to speak for him in connection with the Executor's Petition.

Having considered the Petition of the Executor, the Executor's Notice of Po Chung's Position Re: DHLI Claims, the arguments of counsel and in furtherance of this Court's August 21, 1997, Order Granting Petition for Instructions and Approving Activity Report Regarding DHLI Settlement, the Court finds that it is in the best interest of the Estate and in furtherance of this Court's jurisdiction, good cause exists therefore,

AND THE COURT HEREBY ORDERS AS FOLLOWS:

1. Mr. Po Yang Chung is hereby enjoined from taking any action that places, or threatens or may threaten to place a question, cloud, lien or encumbrance on clear title to the shares of the Estate's DHLI stock or interfering in any manner in the Executor's efforts to conclude the settlement and closing of the sale of the Estate's DHLI shares promptly so that the proceeds may be received by the Estate without further delay.

2. Mr. Po Yang Chung is further ORDERED TO SHOW CAUSE why this injunction should not continue in effect following a hearing on October 16, 1997 at 9:00 a.m., whereby he is ORDERED to appear to testify regarding:

a) the purported basis for his asserted equitable interest in the Estate's DHLI shares; and

b) whether his attempt to place a cloud on the title to the Estate's DHLI stock is an attempt to pressure the Executor into abandoning its efforts to determine, in the best interest of the Estate, the validity of Mr. Po Yang Chung's claims against the Estate filed in this Court and the Estate's claims against Mr. Po Yang Chung.

3. The Executor is instructed to take all additional action as is prudent and necessary or appropriate with respect to its efforts to close the sale of the Estate's DHLI shares, including without limitation, instituting legal proceedings against Mr. Po Yang Chung, and/or other individuals or entities acting in concert with him, for any damage that his wrongful acts have caused (or will cause) the Estate and/or seeking declaratory relief regarding Mr. Chung's purported ownership rights in the Estate's DHLI shares.

IT IS SO ORDERED this 5th date of September, 1997.

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO,
Presiding Judge

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ATTORNEYS FOR BANK OF SAIPAN,
EXECUTOR

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

IN THE MATTER OF:	) CIVIL ACTION NO. 95-626-A
	) /s/ ACC
ESTATE OF LARRY L. HILLBLOM,	) ~~[PROPOSED]~~ **ORDER REGARDING PO YANG CHUNG**
Deceased.	) /s/ ACC
	) ~~Date: October 16, 1997~~
	) /s/ ACC
	) ~~Time: 9:00 a.m.~~
	) /s/ ACC
	) ~~Judge: Alexander C. Castro~~

(Filed Oct. 17, 1997)

On September 5, 1997, this Court issued an order enjoining Mr. Po Yang Chung "from taking any action that places, or threatens or may threaten to place a question, cloud, lien or encumbrance on clear title to the shares of the Estate's DHLI stock or interfering in any manner in the Executor's efforts to conclude the settlement and closing of the sale of the Estate's DHLI shares promptly so that the proceeds may be received by the Estate without further delay." Order Regarding Executor's Supplemental Petition for Instructions by the Executor and Supplemental Activity Report Regarding Settlement of DHLI Arbitration and Order to Show Cause [Po Yang Chung] at 2.

The Court's order also provided:

> Mr. Po Yang Chung is further ORDERED TO SHOW CAUSE why this injunction should not continue in effect following a hearing on October 16, 1997, at 9:00 a.m., whereby he is ordered to appear to testify regarding:
>
> a) the purported basis for his asserted equitable interest in the Estate's DHLI shares; and
>
> b) whether his attempt to place a cloud on the title to the Estate's DHLI stock is an attempt to pressure the Executor into abandoning its efforts to determine, in the best interest of the Estate, the validity of Mr. Po Yang Chung's claims against the Estate filed in this Court and the Estate's claims against Mr. Po Yang Chung.

Id. at 2.

Mr. Po Yang Chung had actual notice of the Court's Order and failed to appear at the hearing on October 16,

1997 at 9:00 a.m. or thereafter. Ms. Lecia Eason of Eason & Halsell appeared on behalf of Mr. Po Yang Chung.

Having reviewed the Executor's request for an order finding Mr. Po Yang Chung in civil contempt, and for imposing sanctions, and having considered the submissions and arguments of the parties, the Court hereby ORDERS:

1. The Court finds Mr. Po Yang Chung to be in civil contempt of court for his failure to appear at the hearing on October 16, 1997.

2. The injunction issued on September 5, 1997, shall continue in effect against Mr. Po Yang Chung until further order of the Court;

3. Mr. Po Yang Chung is further ORDERED TO SHOW CAUSE at a hearing on November 6, 1997, at 9:00 a.m., why this Court should not impose sanctions against Mr. Po Yang Chung including but not limited to (1) entry of a default judgment dismissing Mr. Chung's claims against the Estate with prejudice including his claim to certain contractual rights for the Estate's Class A and Class B shares of DHLC, his claim for $300,000 plus interest, and any other claim Mr. Chung may have against the Estate; (2) imposing monetary sanctions against Mr. Po Yang Chung to be paid to the Estate for contempt of the Court's injunction in causing delay or interference with the sale of the Estate's DHLI shares; and (3) imposing additional monetary and non-monetary sanctions as necessary in aid of the Court's jurisdiction.

4. Mr. Po Yang Chung is further enjoined, pending the hearing on November 6, 1997, from taking any action

to interfere with the administration of the Estate (or any known or unknown asset of the Estate) or to take any action that would affect or circumvent the ability of the Court to impose appropriate sanctions for his contempt of this Court's lawful orders.

5. The Executor shall file and serve on or before October 23, 1997 a Memorandum of Points and Authorities in support of the relief it seeks against Mr. Chung on behalf of the Estate. Mr. Chung and all interested parties shall file and serve any response regarding the Executor's Motion of Points and Authorities on or before October 30, 1997. The Executor's reply shall be due on or before November 4, 1997.

6. The Executor shall immediately serve on Mr. Po Yang Chung and all interested parties a copy of this Order.

SO ORDERED this 17th day of October, 1997.

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO
Presiding Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF THE NORTHERN MARIANA ISLANDS

In re Claim of the BANK OF SAIPAN, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM, Claimant, -against- CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON AND GREENPARK INTERNATIONAL LTD., Respondents.	CIVIL ACTION NO. 95-626-A CV 97-0063 **NOTICE OF REMOVAL** (Filed Oct. 30, 1997)

Respondent Po Yang Chung, by his undersigned attorneys, respectfully removes to this Court, pursuant to 9 U.S.C. § 205 and 28 U.S.C. § 1446, the Cross-Claim brought by the Bank of Saipan, as Executor of the Estate of Larry Lee Hillblom (the "Executor"), against Respondents Chung, Schwartz, Donnici, Robinson and Greenpark International Ltd. before the Superior Court of the

Commonwealth of the Northern Mariana Islands ("CNMI") on July 16, 1997. All Respondents have consented.

Exhibits Omitted

JURISDICTION AND VENUE

1. On July 16, 1997, the Executor filed a Cross-Claim against Chung and others in the Superior Court for the Commonwealth of the Northern Mariana Islands that presides over the probate proceedings concerning the Estate of Larry Lee Hillblom. As it concerns Chung, that Cross-Claim requests that the Superior Court adjudicate whether Chung paid all amounts due Hillblom for the purchase of Hillblom's stock interest in Monterrey Investments Ltd. ("Monterrey"), a British Virgin Islands company that was then the holding company of DHL International Ltd. ("DHLI") (A copy of the Executor's Cross-Claim is annexed hereto as Exhibit A.) The arrangement for Hillblom to sell and Chung to buy the Monterrey shares as well as Chung's payment for those shares is reflected in a series of agreements: (1) the Agreement Re: Monterrey Investments Limited, dated December 31, 1989; (2) the Monterrey Investment Agreement, dated December 7, 1990; (3) the Agreement as to Acquisition and Distribution of Certain Assets, dated December 7, 1990; and (4) two April, 1995 Payment Agreements (collectively, "the Agreements") (each Agreement is annexed, respectively, as Exhibits B through F). Under these Agreements, any claims, controversies or disputes arising out of or relating to the Agreements must be

referred to arbitration. Accordingly, Chung has commenced an arbitration to resolve the parties' dispute as to the amounts allegedly due under the Agreements by filing a Request for Arbitration, dated October 30, 1997, before the International Chamber of Commerce ("ICC").

2. This Court has jurisdiction over the Executor's Cross-Claim pursuant to 9 U.S.C. §§ 202-205 and 28 U.S.C. § 1441(b), which confer original federal question and removal jurisdiction in the federal district courts, regardless of the citizenship of the parties or the amount in controversy, where the subject matter of an action or proceeding pending in a state court relates to an arbitration agreement falling under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "New York Convention"). Venue is proper under 9 U.S.C. § 205, which provides for removal of any such action to the federal district court for the district and division embracing the place where the action is pending.

THE PARTIES

3. Claimant Bank of Saipan is the Executor of the Estate of Larry Lee Hillblom, and is currently responsible for representing the Estate in all claims filed by or against the Estate, including the requested ICC Arbitration. Hillblom is a party to the Agreements.

4. Respondent Chung is a Hong Kong resident and a party to the Agreements.

GROUNDS FOR REMOVAL

Section 205 of the Federal Arbitration Act Authorizes Removal of Any Action That Relates to an Arbitration Agreement Falling Under the New York Convention

5. Section 205 of the Federal Arbitration Act ("FAA") provides:

> Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceedings to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9 U.S.C. § 205. An agreement to arbitrate falls under the New York Convention if it arises out of a commercial legal relationship which is either not entirely between U.S. citizens or bears some reasonable relation with one or more foreign states. 9 U.S.C. § 202. The procedure for removal is governed by the general federal removal statute, 28 U.S.C. § 1446, except as otherwise provided by the FAA.

The Executor's Cross-Claim Relates to an Arbitration Agreement and a Request for ICC Arbitration Falling Under the New York Convention

6. On December 31, 1989, Hillblom agreed to sell and Chung agreed to buy Hillblom's interest in Monterrey for US$226,000,000 plus interest. Chung has fully satisfied his payment obligations to Hillblom under the Agreements by transferring assets and cash for the amount owed and has so advised the Executor.

7. Nevertheless, the Executor claims that Chung has not paid the amounts owed under the Agreements and has sued Chung in three fora on that basis.

8. The Executor's Cross-Claim is one of the three lawsuits filed against Chung and disputes that Chung has transferred assets and cash for payment of Hillblom's Monterrey shares as agreed to, recorded and/or ratified in the Agreements.

9. Under the Agreements, any claims, controversies or disputes relating to the Agreements – including Chung's payment for Hillblom's Monterrey shares – must be resolved by arbitration pursuant to the following provision:

> Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in Hong Kong (unless the Parties agree to another jurisdiction), in the English language before a sole arbitrator. The Parties shall attempt, by agreement, to nominate the sole arbitrator for confirmation by the ICC Court of

> Arbitration. If the Parties fail so to nominate a sole arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other Parties, then each Party shall designate one arbitrator and those two shall agree on a third arbitrator. The three arbitrators will have the power and authority to make a final decision, non-appealable and binding on the Parties. The law applicable to any such dispute shall be the then-current law of Hong Kong, or if such dispute arises after 1997, the law of Hong Kong as it existed prior to 1997.

Exhibit C at 7, ¶9; Exhibit D at 7, ¶11.

10. The Executor's Cross-Claim seeks adjudication of issues involving Agreements in which the parties have agreed to arbitrate such disputes.

11. In his Request for Arbitration to the ICC, Chung seeks an accounting and a declaration that he has fully paid the agreed-upon price for the Monterrey shares.

12. As set forth in the Agreements, Chung and Hillblom executed an Agreement on December 31, 1989 under which Hillblom would sell to Chung his shares of Monterrey. Hillblom reserved the option in this Agreement to take in specie certain assets then owned by Monterrey, its subsidiaries or related companies at agreed values in satisfaction of the purchase price.

13. Subsequently, Chung and Hillblom entered into four more Agreements under which they agreed to, recorded and/or ratified the transfer of assets or cash by Chung in satisfaction, in whole or in part, of the amount due. Chung entered into the DHL International Ltd./

Middlestown N.V. Shareholders Agreement (the "Distribution Agreement") with other parties. (A copy of this agreement is annexed as Exhibit G).

14. In fact, Hillblom and Chung later agreed that full payment had been made. In April 1995, Chung, Hillblom and others met in Hong Kong for a period of two or three days to discuss business developments and strategies. Among the topics discussed was Chung's payment for the Monterrey shares under the Agreements.

15. During this discussion, Chung and Hillblom reviewed one of the Agreements, drafted by the DHL retained advisor, which contained an itemization of certain assets and cash Chung had transferred to Hillblom as part payment for the Monterrey shares. Both Hillblom and Chung orally agreed to the itemization. Hillblom later signed the Agreement in Vietnam.

16. Also at the April 1995 meeting, Chung and Hillblom agreed to the terms of another of the Agreements under which Chung transferred and assigned all rights to his holdings in Danao International Holdings Limited ("Danao Int'l"). The amount was deemed to be payment by Chung to Hillblom towards the amount Chung owed for the Monterrey shares appropriated for the purposes of the 1989 Agreement with effect on June 2, 1991. They also agreed that Chung had overpaid Hillblom and that the excess payment entitled Chung to retain a 10% interest in Danao Int'l.

17. In addition to the payments made under the Agreements, Chung also transferred cash to Hillblom's various accounts and to third parties acting for Hillblom

at various times between 1989 and 1995 in further and complete satisfaction of the debt.

18. Chung has paid completely the debt he owed to Hillblom for the Monterrey shares. The Executor improperly seeks to litigate its claim with respect to the amount allegedly owed under the Agreements, a claim that is subject to arbitration under the terms of the Agreements.

19. In addition, the Executor in the Hillblom probate proceedings has sought and obtained a hearing at which claims raised in the Cross-Claim will be heard. These proceedings, in the course of which the Executor sought and obtained an injunction and civil contempt order against Chung, also raise arbitrable issues and should be removed. In particular, the Executor seeks to have the probate court divest Chung of his rights – designated to Chung under the Agreements – to shares of DHL Corporation Class "A" and Class "B" stock currently held by the Estate.

20. At the same time Chung has moved to remove the Executor's Cross-Claim, he has also moved to stay the Executor's litigation of arbitrable issues pursuant to 9 U.S.C. §§ 3 and 208 and has moved to compel arbitration pursuant to 9 U.S.C. §§ 206 and 4.

The Executor's Cross-Claim Is Properly Removed Pursuant to 9 U.S.C. § 205 and 28 U.S.C. § 1446

21. The arbitration agreements to which the Executor's Cross-Claim relates fall under the New York Convention within the meaning of 9 U.S.C. § 202 because (a) they arise out of a commercial legal relationship between Hillblom and Chung for the sale, purchase and transfer of

assets of an international commercial enterprise and (b) they are not entirely between citizens of the United States and are related, in several respects, with one or more foreign states. The Cross-Claim is therefore subject to removal pursuant to 9 U.S.C. § 205.

22. As defendant to the Cross-Claim for the purposes of Section 205 of the FAA, Chung is entitled to remove that Cross-Claim pursuant to 9 U.S.C. § 205.

23. Chung was served with the Executor's Cross-Claim on July 16, 1997, and is filing this Notice of Removal before the trial of that Cross-Claim, as required under Section 205 of the FAA.

24. Contemporaneous with this Notice of Removal, Chung is moving this Court for an order staying adjudication of the Cross-Claim and compelling arbitration pursuant to the Agreements.

25. No prior application for the same or similar relief has been made to this or any other Court.

WHEREFORE, Respondents respectfully remove the Executor's Cross-Claim from the Superior Court of the Commonwealth of the Northern Mariana Islands to this Court.

Dated: Saipan, Northern Mariana Islands
October 30, 1997

EASON & HALSELL

By: /s/ Lecia Eason
Lecia Eason
of Attorneys for Respondent Chung

CRAVATH, SWAINE & MOORE

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[Letter Head Names Omitted In Printing]

October 29, 1997

Cross-Claim of Bank Saipan, Executor to Claim of Chung Po Yang, Stephen J. Schwartz, Peter J. Donnici, William A. Robinson and Greenpark International Ltd.
Civil Action No. 95-626 (Superior Ct. N.M.I.)
(Filed Nov. 07, 1997)

Dear Sir:

We have been authorized by Greenpark International Ltd. to state that it consents to the removal of the above captioned action, pursuant to the Federal Arbitration Act, 9 U.S.C. § 205, and the General Federal Removal Statute, 28 U.S.C. § 1446(a), from the Superior Court of the Commonwealth of the Northern Mariana Islands to the United States District Court for the District of the Northern Mariana Islands.

Very truly yours,

/s/ Ronald S. Rolfe
Ronald S. Rolfe

Conrad K. Harper, Esq.
Simpson Thacher & Bartlett
c/o Lecia Eason, Esq.
Eason & Halsell
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Saipan, MP 96950

VIA FACSIMILE

App. 61

DRAMLA s.a.
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Genéve
Suisse

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E-mail: dramla@iprolink.ch

Versoix, 29th October 1997

Mr. Martin D. Fairbairn
6/flr. 237 Prince Edward Road West
Kowloon
Hong Kong

Fax No. 00852 2482 5016

Dear Martin,

I have contacted Richard Jeune and advised him to give our consent to removing case to Hong Kong.

In much haste.

Kind regards,

Yours sincerely,

/s/ [Illegible]
David R. Allen

DRA/sdm16

[Initialed PP]

Re: Cross-Claim of Bank of Saipan, Executor to Claim of Chung Po Yang, Stephen J. Schwartz, Peter J. Donnici, William A. Robinson and Greenpark International Ltd., Civil Action No. 95-626 (Superior Ct. N.M.I.)

Conrad K. Harper
Simpson Thacher & Bartlett
c/o Lecia Eason, Esq.
Second Floor
Flametree Office Building
Lower Capitol Hill
P.O. Box 5549
Saipan, MP 96950

Dear Sir:

I hereby consent to the removal of the above captioned action, pursuant to the Federal Arbitration Act, 9 U.S.C. § 205, and the general Federal Removal Statute, 28 U.S.C. § 1446(a), from the Superior Court of the Commonwealth of the Northern Mariana Islands to the United States District Court for the District of the Northern Mariana Islands.

WILLIAM A. ROBINSON

By: /s/ William A. Robinson

Dated: October 29 1997

Re: Cross-Claim of Bank of Saipan, Executor to Claim of Chung Po Yang, Stephen J. Schwartz, Peter J. Donnici, William A. Robinson and Greenpark International Ltd., Civil Action No. 95-626 (Superior Ct. N.M.I.)

Conrad K. Harper
Simpson Thacher & Bartlett
c/o Lecia Eason, Esq.
Eason & Halsell
Second Floor
Flametree Office Building
Lower Capital Hill
P.O. Box 5549
Saipan, MP 96950

Dear Sir:

I hereby consent to the removal of the above captioned action, pursuant to the Federal Arbitration Act, 9 U.S.C. § 205, and the general Federal Removal Statute, 28 U.S.C. § 1446(a), from the Superior Court of the Commonwealth of the Northern Mariana Islands to the United States District Court for the District of the Northern Mariana Islands.

PETER J. DONNICI

By: /s/ Peter J. Donnici

Dated: October 27 1997

Re: Cross-Claim of Bank of Saipan, Executor to Claim of Chung Po Yang, Stephen J. Schwartz, Peter J. Donnici, William A. Robinson and Greenpark International Ltd., Civil Action No. 95-626 (Superior Ct. N.M.I.)

Conrad K. Harper
Simpson Thacher & Bartlett
c/o Lecia Eason, Esq.
Eason & Halsell
Second Floor
Flametree Office Building
Lower Capital Hill
P.O. Box 5549
Saipan, MP 96950

Dear Sir:

I hereby consent to the removal of the above captioned action, pursuant to the Federal Arbitration Act, 9 U.S.C. § 205, and the general Federal Removal Statute, 28 U.S.C. § 1446(a), from the Superior Court of the Commonwealth of the Northern Mariana Islands to the United States District Court for the District of the Northern Mariana Islands.

STEPHEN J. SCHWARTZ

By: /s/ Stephen J. Schwartz

Dated: October ___ 1997

EASON & HALSELL
Attorneys at Law
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Telephone: (670) 322-7840
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Attorneys for Respondent
Po Yang Chung

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTHERN MARIANA ISLANDS

In re Claim of the BANK OF SAIPAN, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM, Claimant, -against- CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON AND GREENPARK INTERNATIONAL LTD., Respondents.	)	CIVIL ACTION NO. CV-97-0063 **RESPONDENT PO YANG CHUNG'S MOTION TO STAY LITIGATION AND COMPEL ARBITRATION** (Filed Oct. 30, 1997)

Respondent Po Yang Chung ("Chung"), by his undersigned attorneys, hereby respectfully moves this Court for an order, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 3, 4, 206 and 208, compelling arbitration of claims arising out of agreements entered into by Respondent Chung and Larry Lee Hillblom, which are properly subject to arbitration, and staying claims and related

proceedings instituted by the Bank of Saipan, as Executor of the Estate of Larry Lee Hillblom.

NATURE OF THE MOTION

1. As described in greater detail below, Claimant and Respondent Chung dispute whether Chung owes a certain amount to the Estate of Larry Lee Hillblom. On December 31, 1989, Hillblom agreed to sell and Chung agreed to buy Hillblom's interest in Monterrey Investments Ltd. ("Monterrey"), a British Virgin Islands company that was then the holding company of DHL International Ltd. ("DHLI"), for US$226,000,000 plus interest. Pursuant to the five Agreements in which they agreed to the purchase and sale of the shares, as well as to Chung's payment for the shares, Chung has fully satisfied his payment obligations to Hillblom and has made complete payment, in assets and cash, of the amount owed. The Estate claims that Chung has not paid the debt and has sued Chung in three fora on that basis. Several of the agreements, however, contain a broad arbitration clause that provides that any disputes, including disputes concerning Chung's payment for the shares, must be referred to arbitration in Hong Kong.

2. Notwithstanding Hillblom's and Chung's agreement to arbitrate any such issues, the Executor filed a Cross-Claim in the CNMI Superior Court, before which the Estate's probate proceedings are pending. Respondent has removed that action to this Court pursuant to the removal provisions of the Federal Arbitration Act ("FAA") for the purpose of invoking this Court's jurisdiction under the FAA to enforce arbitration agreements

falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Respondent Chung, by request for arbitration dated October 30, 1997, has commenced an arbitration to resolve the parties' dispute as to the amounts allegedly owed under the Agreements.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 9 U.S.C. §§ 203 and 208 and 28 U.S.C. § 1441(b), which confer original federal question and removal jurisdiction in the federal district courts, regardless of the citizenship of the parties or the amount in controversy, where the subject matter of an action or proceeding pending in a state court relates to an arbitration agreement falling under the New York Convention. Venue is proper under 9 U.S.C. § 205, which provides for removal of any such action to the federal district court for the district and division embracing the place where the action is pending.

THE PARTIES

4. Claimant Bank of Saipan is the Executor of the Estate of Larry Lee Hillblom – a founder of the DHL air express business and a party to the Agreements – and is currently responsible for representing the Estate in all claims filed by or against the Estate, including the pending litigation between the parties.

5. Respondent Chung is a citizen and resident of Hong Kong and is a party to both the Agreements with Hillblom and the pending litigation.

6. Respondent Stephen J. Schwartz is a citizen and resident of the United States.

7. Respondent Peter J. Donnici is a citizen and resident of the United States.

8. Respondent William A. Robinson is a citizen and resident of the United States.

9. Respondent Greenpark International Limited ("Greenpark") is a corporation incorporated under the laws of the British Virgin Islands.

GROUNDS FOR THE MOTION

The Agreements Between Chung and Hillblom Require That Any Claims or Disputes Relating to Payment of the Amount Owed to Hillblom Must Be Resolved by Arbitration

10. On December 31, 1989, Chung and Hillblom executed an agreement under which Hillblom would sell to Chung his shares of Monterrey Investment Ltd. ("Monterrey"). Hillblom reserved the option in this agreement to take in specie certain assets then owned by Monterrey, its subsidiaries or related companies at agreed values in satisfaction of the purchase price. Subsequently, Chung and Hillblom entered into four more agreements under which they agreed to and/or ratified the transfer of assets or cash by Chung in complete satisfaction of the amount owed. Specifically, these agreements are: (1) the Agreement Re: Monterrey Investments Limited, dated December 31, 1989; (2) the Monterrey Investment Agreement, dated December 7, 1990; (3) the Agreement as to Acquisition and Distribution of Certain Assets, dated December

7, 1990; and (4) two April, 1995 Payment Agreements (collectively, the "Agreements"). (A copy of each agreement is annexed to the accompanying Declaration of Conrad K. Harper ("Harper Declaration"), respectively, as Exhibits A through E).

11. All of the Agreements relate to the amount Chung owed and paid to Hillblom for the Monterrey shares and must be read together. Under the Agreements, any disputes relating to Chung's payment for the Monterrey shares must be resolved by arbitration pursuant to the arbitration clause which provides:

> Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in Hong Kong (unless the Parties agree to another jurisdiction), in the English language before a sole arbitrator. The Parties shall attempt, by agreement, to nominate the sole arbitrator for confirmation by the ICC Court of Arbitration. If the Parties fail so to nominate a sole arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other Parties, then each Party shall designate one arbitrator and those two shall agree on a third arbitrator. The three arbitrators will have the power and authority to make a final decision, non-appealable and binding on the Parties. The law applicable to any such dispute shall be the then-current law of Hong Kong, or if such dispute arises after 1997, the law of Hong Kong as it existed prior to 1997.

The Executor's Saipan Claim and Related Proceedings

12. In April 1995, Hillblom was lost at sea following an airplane crash. The Superior Court of the Commonwealth of the Northern Mariana Islands on or about May 21, 1995, decreed him to have died.

13. Soon thereafter, Chung filed an administrative notice in the probate court in order to preserve his rights in the DHLC shares, which, as described in the accompanying Memorandum of Law, he obtained under the Agreements.[1] Chung's rights to these shares derive from the Agreements and thus any dispute concerning them is subject to the arbitration provisions. The Executor claims Chung does not have such rights and has sued him.

14. Almost one year later on May 7, 1996, the Executor wrote to Chung requesting documentary evidence that Chung had paid the full amount due for the Monterrey shares. Even though he was away from his Hong Kong office at the time, Chung immediately responded to the Executor that he did not keep the records of the transactions but that the Executor should communicate with the jointly retained accountant whose professional responsibilities to Hillblom, Chung and the others included keeping the relevant records.

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[1] The CNMI statute of limitations governing probate actions requires a party to bring an action against the executor within two years after the Executor's appointment. 7 CMC § 2504. Since there had been no progress on his Notice of Claim almost two years later, Chung filed a Declaratory Relief action to preserve his rights to the DHLC shares against the limitations bar.

15. Over the next fourteen months, Chung did not receive another request for information nor did he hear any mention of the Monterrey transaction from the Hillblom Estate until the Executor sued him in three fora in July 1997.

16. On July 16, 1997, the Executor filed a Cross-Claim against Chung and others in the CNMI Superior Court in Saipan. As it concerns Chung, the Executor alleged that Chung had not repaid the amount owed for the Monterrey shares. The Executor also sought a declaration as to the Estate's rights and duties arising from "various agreements" between Hillblom and the defendants including the purchase and distribution of Hillblom's Monterrey shares sold to Chung. These issues are subject to arbitration under the Agreements.

17. The Executor also sued Chung in Hong Kong. On July 16, 1997, the Executor filed a Writ of Summons in the High Court of Hong Kong, Court of First Instance, against Chung. The Executor requested an amount described as the full amount due for the Monterrey shares. However, the writ has not yet been served.

18. The Executor also brought suit in San Francisco. On July 15, 1997, the Executor filed a Complaint for Declaratory Relief, Constructive Trust and Accounting in the Superior Court of California for the County of San Francisco against Chung. This complaint was filed under seal, but upon information and belief Claimant believes that it is a claim for the same amount owed for the Monterrey shares. This Complaint has yet to be served.

19. In addition, the Executor in the Hillblom probate proceedings has sought and obtained a hearing at

which claims raised in the Cross-Claim will be heard. These proceedings, in the course of which the Executor sought and obtained an injunction and civil contempt order against Chung, also raise arbitrable issues and should be removed. In particular, the Executor seeks to have the probate court divest Chung of his rights – designated to Chung under the Agreements – to shares of DHL Corporation Class "A" and Class "B" stock currently held by the Estate.

20. As of this date, the Executor has refused to acknowledge that Chung has paid completely the amount owed for the Monterrey shares. In fact, Chung overpaid Hillblom, a fact Hillblom recognized before he died.

Respondent Chung's
Request for ICC Arbitration

21. Concurrently with this Motion, Respondent Chung, by a request for arbitration dated October 30, 1997, has commenced an arbitration with the International Chamber of Commerce to resolve the parties' dispute as to the amounts allegedly owed under the Agreements. A copy of this Request is attached as Exhibit F to the Harper Declaration.

The Federal Arbitration Act Requires that the Executor's Cross-Claim Be Stayed Pending Arbitration

22. As demonstrated in the accompanying Memorandum of Law, the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, requires that all issues concerning any claims or disputes relating to the payment of the amount owed

under the Agreements be referred to arbitration in accordance with the terms of the Agreements, and that the Executor's Cross-Claim be stayed pending arbitration.

WHEREFORE, for all of the foregoing reasons as set forth in greater detail in the accompanying Memorandum of Law, Respondent Chung respectfully requests that this Court issue an order, pursuant to 9 U.S.C. §§ 206 and 4, compelling Claimant to arbitrate in ICC arbitration all issues relating to the Hillblom and Chung's rights and duties arising out of and relating to the transactions included in the Agreements and staying the Executor's Cross-Claim pursuant to 9 U.S.C. §§ 3, 203 and 208 pending the termination of that arbitration.

Dated: Saipan, Northern Mariana Islands
October 30, 1997

EASON & HALSELL

By: /s/ Lecia Eason
Lecia Eason
Attorneys for
Respondent Chung

EASON & HALSELL
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Attorneys for Respondent
Po Yang Chung

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTHERN MARIANA ISLANDS

In re Claim of the BANK OF SAIPAN, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM, Claimant, -against- CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON and GREENPARK INTERNATIONAL LTD., Respondents.	CIVIL ACTION NO. CV-97-0063 **MOTION FOR AN ORDER TO SHOW CAUSE WHY A TEMPORARY RESTRAINING ORDER SHOULD NOT ISSUE STAYING LITIGATION** (Filed Nov. 06, 1997) Date: 11-06-97 Time: 4:00 p.m. Judge: Alex Munson

COMES NOW Respondent PO YANG CHUNG, by and through the undersigned counsel, and moves this

Court pursuant to FRCP 65 to order the Executor to appear and show cause why a temporary restraining order should not issue staying litigation in the CNMI Superior Court relating to the Executor's Cross Claim and orders pertaining thereto filed by the CNMI Superior Court on September 5, 1997 and October 17, 1997 and the oral order directing a sanctions hearing on November 6, 1997.

Respondent further moves that he be awarded costs and attorneys' fees incurred in bringing this motion.

This motion is made and based on the above-cited civil rules, the declaration and memorandum attached hereto and the records and files herein.

DATED this 6th day of November, 1997.

SIMPSON THACHER & BARTLETT
(a partnership which includes professional corporations)

Attorneys for Respondent

By: /s/ Conrad K. Harper
CONRAD K. HARPER

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Attorneys for Respondent
Po Yang Chung

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF
NORTHERN MARIANA ISLANDS

In re Claim of the BANK OF SAIPAN, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM, Claimant, -against- CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON AND GREENPARK INTERNATIONAL LTD., Respondents.	CIVIL ACTION NO. CV-97-0063 **MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT PO YANG CHUNG'S MOTION FOR AN ORDER TO SHOW CAUSE** (Filed Nov. 06, 1997)

Respondent Po Yang Chung ("Chung") respectfully submits this Memorandum of Law in Support of his Motion for an Order to Show Cause why a Temporary Restraining Order should not Issue Staying Litigation of this matter in the Superior Court of the Commonwealth of the Northern Mariana Islands.

PRELIMINARY STATEMENT

On October 30, 1997, Chung removed to this Court all proceedings related to the Executor's Cross Claim from the CNMI Superior Court to this Court pursuant to 9 U.S.C. § 1446. Reference is hereby made to Chung's removal papers without repeating here all that they contain.

On October 30, 1997, by Notice to the CNMI Superior Court of the Filing of the Notice of Removal, Chung advised the Superior Court of the removal and of the fact that all proceedings were stayed unless and until the case is remanded.

Today, November 6, 1997, counsel for all parties appeared before the CNMI Superior Court on the return date of the Executor's motion for contempt and further sanctions against Chung. Over the objection of Chung's counsel who advised the Superior Court that it had no jurisdiction by virtue of the removal, the Superior Court nonetheless proceeded with a hearing on sanctions relying on *Armistead v. C & M Transport, Inc*, 49 F.3d 43 (1st Cir. 1995), a case in which the First Circuit found removal of a state workers' compensation case forbidden by 28 U.S.C. § 1445 (c). The court held that the statute also barred removal of a subsequent state court action which

was merely supplementary to the compensation case. The case is entirely irrelevant to the instant case where Congress has expressly authorized removal of a proceeding related to a treaty-enforceable international arbitration agreement.

The Executor called as its first witness, Conrad Harper, counsel to Mr. Chung. At the luncheon break, Mr. Harper was still on the stand under direct examination.

I.

A REMOVED ACTION UNDER 28 U.S.C. § 1446 DEPRIVES THE STATE COURT OF FURTHER JURISDICTION

Where a matter is removed from state to federal court pursuant to 28 U.S.C. § 1446, "the state court shall proceed no further unless and until the case is remanded." *Fifth v. Blazon Flexible Flyer, Inc.*, 512 F.2d 899, 901 (5th Cir. 1975) (citing 28 U.S.C. § 1446 (d)); *LePore v. Parker Woodward Corp.*, 823 F. Supp. 432, 435 (E.D. Mich. 1993); 1A Moore's Fed. P.0.168 at 511-516. Indeed, "removal cuts off the jurisdiction of the court from which the case was removed". *In re Wellington Resources Corp.*, 20 B.R. 64, 71 (N.D. Tex. 1982); *Allstate Ins. Co. v. Superior Court*, 132 Cal.App.3d 670, 674, 183 Cal.Rptr. 330, 332 (1982) (holding that state court could not resume its jurisdiction after removal -- even though federal court had dismissed action without prejudice -- because federal court had not remanded the action).

The federal court to which the case has been removed may protect its jurisdiction by issuing an injunction restraining further proceedings in the state court after

removal has been effected. *See Maseda v. Honda Motor Co.*, 861 F.2d 1248, 1254-55 (11th Cir. 1988). Such injunctions are permissible because "they are necessary in aid of [the courts] jurisdiction", which is an exception to the Anti-Injunction Act, 28 U.S.C. § 2283 prohibition against injunction of state court proceedings. *Id.*

Thus where, as here, a state court has assumed jurisdiction, the Court's action is void. *Medrano v. Texas*, 580 F.2d 803, 804 (5th Cir. 1978) (holding that state court's constructive notice of petition of removal is sufficient to deprive it of jurisdiction, making further proceedings void); *Adair Pipeline Co. v. Pipeliners Local Union*, 325 F.2d 206 (5th Cir. 1963) (holding that when state judge receives copy of petition for removal in open court, the court is on notice that case has been removed, and the court may not proceed even though the petition was not filed with clerk of state court). This is true even if the removal was improper -- which is not the case here. *See, e.g., Medrano v. Texas*, 580 F.2d at 804. The United States Supreme Court has held and other courts have in fact construed Section 1446(d) as an express congressional authorization to enjoin or stay the state court proceedings. *Mitchum v. Foster*, 407 U.S. 225, 234-37 (1972); *Frith*, 512 F.2d at 901; *Masseda*, 861 F.2d at 1254; 17 Wright, Miller & Cooper, Federal Practice and Proc., *Jurisdiction* 2d § 4224, at 521.

Accordingly, the state court's action today is void. This Court should issue an injunction prohibiting further action by the state court in this matter.

II.

THE CROSS-CLAIM IS PROPERLY REMOVED UNDER THE FEDERAL ARBITRATION ACT

A. *Removal of Cross-Claims is Proper under § 205*

Although denominated as "Cross Claim," the Executor's pleading is neither an assertion of claims against a co-defendant nor a counterclaim against a complaint. The Cross Claim relates to Chung's Notice of Claim in the probate proceedings but goes well beyond the Notice of Claim by asserting claims for relief never mentioned in the Notice of Claim and seeking to deny all claims of whatever sort Chung has in respect of the Estate of Larry Hillblom. The Cross Claim in its essence is a complaint or suit for broad recovery against Chung. Even if the Executor's pleading is considered a "cross claim" as commonly used, however, the claim is properly removed under the Federal Arbitration Act.

Section 205 of the Federal Arbitration Act provides:

> Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this

> title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9 U.S.C. § 205 (1996).

Although there are not many cases decided under Section 205, the limited case law does hold that removal of a cross-claim is proper under this statute. *See Acme Brick Co. v. Agrupacion Exportadora De Maguinaria Ceramica*, 855 F. Supp. 163 (N.D. Tex. 1994) (holding removal of cross-claim proper under Section 205 because subject matter of cross-claim related to arbitration agreement); *see also Menorah Ins. Co. v. INX Reins. Corp.*, 72 F.3d 218 (1st Cir. 1995) (finding that removal under § 205 could have been based on counterclaim alone).

B. ***A Cross-Claim is an "Action" or "Proceeding"***

In addition, as a general matter of statutory construction, removal of the cross-claim is proper because a cross-claim constitutes an "action or proceeding" within the meaning of Section 205. *See Int'l Business Lists, Ltd. v. Am. Telephone & Telegraph*, 878 F. Supp. 102, 105 (N.D. Ill. 1994) (holding that the word "action" in parties' contract "refers to counterclaims as well as complaints, cross-claims, and the like") (*citing Heneghan v. Sekula*, 181 Ill. App. 3d 238, 536 N.E.2d 963, 966 (1989) (stating that "[t]he ordinary and popular meaning of the term 'action' includes 'all the formal proceedings in a court of justice attendant upon the demand of a right made by one person or another in such court,' " and holding that a third-party action for contribution "clearly falls within

this ordinary and popular meaning"). Furthermore, when used disjunctively with the word "action," the word "proceeding" has an even broader meaning. *See e.g., In re Ladner*, 156 B.R. 664, 666 (D. Colo. 1993) ("Proceeding is a work of broader meaning than action, especially when it is used, disjunctively, with action") (*citing In re Adoption of a Minor*, 136 F.2d 790, 791-92 (D.C. 1943)).

III.

THE CROSS-CLAIM WAS PROPERLY REMOVED UNDER THE GENERAL REMOVAL STATUTE

The cross-claim was properly removed under 28 U.S.C. § 1441(c), 1446. Section 1441(c) allows removal "[w]henever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action." As district courts in the Ninth Circuit have held, removal of third-party claims is proper under this section when they are separate and independent[1]. *Motor Vehicle Cas. Co. v. Russian River County Sanitation Dist.*, 538 F. Supp. 488, 493 (D.C. Cal. 1981) ("if the third-party complaint states a separate and independent claim, which if sued upon alone could have been removed to federal court, there should be no bar to removal."); *Southland Corp. v. Estridge*, 456 F. Supp. 1296, 1301 ("Third Party defendants, like other defendants who have not voluntarily chosen to utilize state

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[1] A third-party claim is "separate and independent" when "it is not at all contingent on a finding of liability on the main claim." *Renaissance Center Venture v. Lozovoj*, 884 F. Supp. 1132, 1138 (E.D. Mich. 1995).

court, should be, and are, allowed to remove separate and independent claims.") These courts follow the minority rule expressed by *Carl Heck Engineers, Inc. v. Lafourche Parish Police Jury*, 622 F.2d 133, 135-36 (5th Cir. 1980) (third-party defendant may remove).

This rule has been adopted in other jurisdictions. *See Hayduk v. United Parcel Service, Inc.*, 930 F. Supp. 584 (S.D. Fla. 1996) (following *Carl Heck*); *Renaissance Center Venture v. Lozovoj*, 884 F. Supp. 1132, 1137-38 (E.D. Mich. 1995) (noting split between Seventh and Fifth Circuits and finding arguments in favor of removal "a more rational approach to the issue"); *Price v. ALFA Mutual Ins. Co.*, 877 F. Supp. 597 (M.D. Ala. 1995) (holding itself bound by *Carl Heck* but finding third-party claim was not separate and independent).

Furthermore, the concern over "piecemeal removal of actions" cited by certain courts for refusing to allow the removal of third-party claims under the general removal statute, *see Killian v. Union L.P. Gas Sys., Inc.*, 568 F. Supp. 679, 680 (W.D. Mo. 1983), should be of little concern to this Court in light of the United States Supreme Court's decision in *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213 (1985) (holding that the Federal Arbitration Act requires district courts to compel arbitration of pendant arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibility of inefficient maintenance of separate proceedings in different forums).

Accordingly, the Executor's Cross-Claim was properly removed under the general removal statute.

CONCLUSION

For the foregoing reasons, this Court should enjoin the Superior Court from any further action in this matter.

DATED this 6th day of November, 1997.

SIMPSON THACHER &
BARTLETT
(a partnership which includes
professional corporations)

Attorneys for Respondent

By: /s/ Conrad K. Harper
CONRAD K. HARPER

NO. ___

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IN RE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS,

Respondent.

CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON and GREENPARK INTERNATIONAL, LTD.,

Real Parties in Interest.

Petition for Writ of Prohibition and/or Mandamus directed to the United States District Court for the Northern Mariana Islands, Civil Action No. 97-0063, Orders Entered on November 8, 1997, and January 13, 1998

PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS BY THE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, petitioner Bank of Saipan certifies that no publicly traded companies are its parents, subsidiaries or affiliates.

Dated: February 11, 1998

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QUESTIONS PRESENTED

1. Did the Federal Arbitration Act ("FAA") (9 U.S.C. §§ 202-205) confer jurisdiction on the United States District Court for the Northern Mariana Islands ("District Court") to remove Petitioner's cross-claim against Chung Po Yang ("Chung") and four other persons pending in probate proceedings in the Superior Court in and for the Commonwealth of the Northern Mariana Islands ("CNMI Probate Court") and to declare stayed contempt proceedings against Chung and Chung's "related" or "intertwined" claims against the Estate of Larry Lee Hillblom ("Estate"), when

a. The probate exception to federal court subject matter jurisdiction foreclosed the District Court from removing part of the probate proceedings before the

CNMI Probate Court (*Pufahl v. Parks' Estate*, 299 U.S. 217, 226 (1936));

b. The District Court had no subject matter jurisdiction to intervene in contempt proceedings pending in the CNMI Probate Court (*Juidice v. Vail*, 430 U.S. 327, 335-36 (1977));

c. Chung had not fulfilled the statutory conditions precedent to removal because he was not a "defendant" within the meaning of the FAA Section 205; all of his co-cross-claim defendants did not join in removal; and the contempt proceedings had been tried (*Hewitt v. City of Stanton*, 798 F.2d 1230, 1232-33 (9th Cir. 1986)); and

d. Chung had been actively litigating against the Estate, in and outside of probate, in the CNMI Superior Court for more than two years before he sought removal without ever claiming any right to arbitrate; the Estate was thereby prejudiced; and he waived arbitration as a matter of law (*Van Ness Townhouses v. Mar Indus. Corp.*, 862 F.2d 754, 759 (9th Cir. 1988); *Fisher v. A.G. Becker Paribas, Inc.* 791 F.2d 691, 693 (9th Cir. 1986))?[1]

2. Did the District Court exceed its jurisdiction and/or prejudicially err by declaring stayed the CNMI Probate Court from imposing sanctions for contempt on Chang, when

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[1] If this Court, following the law of the Circuit (*Van Ness Townhouses*, 862 F.2d at 759), decides that Chung waived arbitration, no other question need be reached because any basis for federal subject matter jurisdiction would forthwith vanish.

a. The contempt proceeding had not been removed, and the FAA permits a stay only of an action that has been removed and is pending in the District Court, and

b. The District Court's intervention in CNMI Probate Court's contempt proceedings is an offense against sovereignty of the Commonwealth in our dual sovereignty system (*Juidice*, 430 U.S. at 335-36)?

3. Did the District Court exceed its jurisdiction or prejudicially err by declaring stayed Chung's "related" claims against the Estate, when

a. The "related" claims had not been removed to the District Court;

b. Those claims were not encompassed by the notice of removal; and

c. Piecemeal removal from State or Commonwealth courts is not permitted by the FAA?

4. If the District Court had jurisdiction to remove the cross-claim from probate and to order arbitration, did it prejudicially err in failing to abstain by applying the principles of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976), when

a. Accepting jurisdiction would result in piecemeal, redundant litigation (*40235 Washington Street Corp. v. Lusardi*, 976 F.2d 587, 588 (9th Cir. 1992));

b. The CNMI Probate Court had first acquired jurisdiction and had possession of the probate res (*Donovan v. City of Dallas*, 377 U.S. 408, 411-12 (1964));

c. Chung was forum shopping to prevent impending imposition of sanctions against him in the CNMI Probate Court (*Nakash v. Marciano,* 882 F.2d 1411, 1415-16 (9th Cir. 1989));

d. Exercise of federal jurisdiction impinged on Commonwealth sovereignty and important interests of the Commonwealth; and

e. Removal has wasted the resources of federal and CNMI courts, of litigants, heirs and creditors of the Estate?

PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT: Petitioner, the Bank of Saipan, Executor of the Estate of Larry Lee Hillblom ("Executor" or "Petitioner"), respectfully states to this Court that the jurisdiction of the Probate Court in and for the Commonwealth of the Northern Mariana Islands ("CNMI Probate Court"), under the Constitution and laws of the Northern Mariana Islands, has been erroneously taken from it by order of the United States District Court for the Northern Mariana Islands ("District Court") by improper removal of part of Probate Civil Action No. 95-626-A to the District Court and by an asserted stay of a contempt proceeding already in trial, and requests that this Court issue its writ to compel remand to the CNMI Probate Court and to prohibit interference with ongoing contempt proceedings in CNMI Probate Court. In support of this Petition, Petitioner shows:

1. This Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651.

2. After the declaration of death of Larry Lee Hillblom ("Hillblom") on June 26, 1995, the probate opened in the CNMI Probate Court on July 7, 1995, by Petitioner, as Executor.

3. The real parties in interest are Chung Po Yang ("Chung"), Stephen J. Schwartz, Peter J. Donnici, William A. Robinson, and Greenpark International, Ltd.

4. On September 1, 1995, Chung filed a claim in the CNMI Probate Court, asserting that he was entitled to the proceeds from the sale of certain shares in DHL Corporation ("DHLC") owned by Hillblom at the time of his death. (Exh. 18.)[2]

5. On September 5, 1996, Chung, DHL International ("DHLI"), and certain DHLI shareholders filed a claim seeking enforcement of alleged rights under a shareholder agreement to purchase the Estate's shares of DHLI. (Exh. 23.)

6. On May 21, 1996, to support his claim, as well as claims of Chung and Respondents Peter J. Donnici and William Robinson, Stephen J. Schwartz filed the "Affidavit of Stephen J. Schwartz in Support of Claim Against the Estate of Larry Lee Hillblom" in the CNMI Probate Court; the declaration attached numerous exhibits, purportedly copies of agreements among the various claimants and Larry Hillblom. (Exh. 5.)

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[2] The separately bound exhibits are filed concurrently herewith.

7. On May 24, 1996, Chung filed another claim against the Estate in the CNMI Probate Court for $300,000. This claim was based on an alleged loan to the Estate after Hillblom's death. (Exh. 18.)

8. On September 29, 1996, Chung filed in the CNMI Probate Court a "Declaration of Po Yang Chung in Support of Certain Claims Against the Estate of Larry Lee Hillblom." (Exh. 18.) Chung therein declared under penalty of perjury his understanding of the rights of various claimants against the Estate, including claims by himself, William Robinson, Middlestown Limited, Cheiro's Consultancy Services Limited, L. Patrick Lupo, Stephen J. Schwartz, H.R.H. Prince Saud Bin Naif Abdulaziz, and Bassam Jabr, under agreements some of which contain arbitration clauses and upon which he later relied in seeking removal to the District Court. (*Id.*)

9. On October 9, 1996, Chung filed a Supplemental Declaration in Support of Claims against the Estate of Larry Lee Hillblom, purporting to provide further support for various claims against the Estate. (Exh. 18.)

10. On July 16, 1997, Chung filed two lawsuits in CNMI Superior Court, outside of Probate, against the Estate, one reasserting the same claims to proceeds from the sale of certain DHLC shares owned by the Estate and the other for $300,000. (Exh. 18.) He did not seek arbitration in either case. The Executor answered and counterclaimed in each of these actions prior to Chung's filing his removal notice, asserting its right of offset with respect to the accounting.

11. On July 16, 1997, Petitioner filed a cross-claim against Chung in the CNMI Probate Court, seeking an

accounting of payments made by Chung in claimed satisfaction of his obligations to Hillblom and the payment of any amounts due. (Exh. 6.)

12. Chung answered the Executor's cross-claim in the CNMI Probate Court without asserting a right to arbitration in his answer. (Exh. 7.)

13. Petitioner has not yet recommended either approval or rejection of the aforesaid claims of Chung because it has insufficient documentary or testamentary evidence to do so.

14. After the Petitioner filed its cross-claim, Chung asserted a baseless claim to the Estate's shares in DHL International, which he had not asserted in any court. (Exh. 18.) Because his frivolous assertions caused substantial delay and expense to Petitioner in order to finalize the pending multi-million-dollar sale of the Estate's DHLI shares, Petitioner sought from the CNMI Probate Court an order requiring Chung to appear in court and testify regarding his actions in blocking the DHLI settlement.

15. On September 5, 1997, the CNMI Probate Court issued an order enjoining Chung "from taking any action that places, or threatens or may threaten to place a question, cloud, lien or encumbrance on clear title to the shares of the Estate's DHLI stock or interfering in any manner in the Executor's efforts to conclude the settlement and closing of the sale of the Estate's DHLI shares promptly so that the proceeds may be received by the Estate without further delay." (Exh. 8.) The CNMI Probate Court also ordered Chung to appear at a hearing on October 16, 1997, to testify with regard to his conduct that

was interfering with the sale of the Estate's assets. (Exh. 8.)

16. On October 16, 1997, Chung failed to comply with the CNMI Probate Court's order to appear, but his counsel appeared on his behalf. That Court thereupon found Chung in civil contempt of court. (Exh. 10.) Chung was ordered to show cause at a hearing on November 6, 1997, why sanctions, including, but not limited to, default judgment and dismissal of his claims against the Estate, should not be imposed. Chung made no attempt by motion, appeal or writ to try to modify or reverse this order or any of the other CNMI Superior Court's orders that he had violated. Court orders (even if ultimately declared invalid) must be obeyed; disobedience is contempt of the court's lawful authority. *Walker v. City of Birmingham*, 388 U.S. 307, 314, *reh'g denied*, 389 U.S. 894 (1967).

17. On October 30, 1997, Chung's counsel appeared and participated in the morning hearing regarding sanctions, and Chung filed in the CNMI Probate Court his opposition to the imposition of sanctions. Minutes thereafter Chung filed his notice of removal of the Executor's cross-claim from the CNMI Probate Court to the District Court. (Exh. 12.) Chung did not personally appear at that hearing.

18. On October 31, 1997, one week prior to the date set for the sanctions hearing, Chung – *for the very first time* – moved in the District Court to stay litigation and compel arbitration, asserting a right to arbitrate the issues which he alleged were the bases of one of his claims

against the Estate regarding the DHLC stock and of the Estate's accounting actions against him. (Exh. 13.)

19. On November 6, 1997 (a week after his notice of removal), and on the date set for the hearing on sanctions in the CNMI Probate Court, Chung again failed to appear in disobedience of that Court's order directing him to appear for hearing on sanctions. Chung then filed in the District Court a so-called "supplement" to his notice of removal, attaching three orders of the CNMI Probate Court dealing with the contempt proceedings, but he sought no relief therein. (Exh. 14.)

20. On November 6, 1997, Petitioner moved to dismiss or to remand Chung's removal to the District Court. (Exh. 15.)

21. On November 8, 1997, the District Court issued an Order Denying the Executor's Motion to Dismiss or Remand. (Exh. 4.) The District Court declared that not only the Executor's cross-claim against Chung was properly removed, but also: "[t]hose portions of [CNMI Probate Court] No. 95-626A that relate to Executor Bank of Saipan's July 16, 1997, 'cross-claim' against respondent Chung and others were automatically stayed at removal, as provided by 28 U.S.C. § 1441(d). . . . " (Exh. 4.) The Court declared that "the contempt proceeding against Chung was also automatically stayed by operation of law. The [CNMI Probate Court] lacks jurisdiction to consider either the 'cross-claim' or the contempt, unless and until there is a further order of this court." (*Ibid.*) The declaration was made despite the statutory provision that a stay, upon removal, applies only to the removed action (28

U.S.C. § 1446(d)), and the notice of removal was limited to the cross-claim.

22. On November 13, 1997, the District Court filed its Decision after Order of November 8, 1997. (Exh. 3.)

23. On November 18, 1997, Petitioner moved for clarification and reconsideration of the District Court's order, joined by petitioner Kinney. (Exhs. 17 & 19.)

24. On January 13, 1998, the District Court issued its Order Denying Executor's Motion for Clarification and Reconsideration. (Exh. 1.) On the same date, the District Court filed its Order Granting Chung's Motion to Stay Litigation and Compel Arbitration. (Exh. 2.)

25. Each of the aforesaid District Court's Orders is in excess of its jurisdiction and/or is prejudicially erroneous for the reasons hereafter stated:

26. Chung's notice of removal was fatally defective for failure of all real parties in interest to timely join in the notice, or to file valid consents, and one of the parties agreed only to removal to Hong Kong. *Chicago R. I. P. R. Co. v. Martin*, 178 U.S. 245, 248 (1900); *Hewitt v. City of Stanton*, 798 F.2d 1230, 1232-33 (9th Cir. 1986); *Employers Ins. of Wausau v. Certain Underwriters at Lloyds, London*, 787 F. Supp. 165, 167-69 (W.D. Wis. 1992). The purported consents thereafter filed were untimely and defective. (Exh. 11.) Moreover, all interested parties in the probate proceedings (heirs, charitable trust, and creditors), who are vitally interested, have not consented to removal.

27. The District Court prejudicially erred in holding that Chung had not waived his right to compel arbitration by numerous acts inconsistent with asserting arbitration rights. Chung had submitted himself to CNMI Probate Court jurisdiction for more than two years by filing two claims in the probate proceeding, answering Petitioner's cross-claim in the probate proceeding, and filing independent actions against the Estate outside of probate in the CNMI Superior Court, and elsewhere without ever seeking arbitration; moreover, only two contracts of the five contracts he cited contain arbitration clauses. Chung only sought removal and arbitration after the CNMI Probate Court's trial of contempt had begun and after that Court had found him in contempt of its valid orders requiring him thereon to appear. Removal is not permitted after commencement of trial by the express terms of 9 U.S.C. § 205. Removal is untimely when used to gain tactical advantage or to delay or defeat adverse decisions in a court from which removal is sought. *Pan Atlantic Group, Inc. v. Republic Ins. Co.*, 878 F. Supp. 630, 642 (S.D.N.Y. 1995). Chung's acts indicated a "conscious decision to continue to seek judicial judgment on the merits of [the] arbitrable claims. The choice was inconsistent with the agreement to arbitrate those claims." *Van Ness Townhouses v. Mar Indus. Corp.*, 862 F.2d 754, 759 (9th Cir. 1988) (quoting *National Foundation for Cancer Research v. A.G. Edwards & Sons*, 821 F.2d 772, 777 (D.C. 1987)); *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912 (3d Cir. 1992); *S&H Contractors v. A.J. Taft Coal Co.*, 906 F.2d 1507, 1514 (11th Cir. 1990). This Court reviews the waiver issue *de novo*. *Fisher v. A.G. Becker Paribas, Inc.*, 791 F.2d 691, 693 (9th Cir. 1986).

28. Petitioner has been prejudiced by Chung's actively litigating in the CNMI Probate Court and in CNMI Superior Court (outside of probate), by his extensive delay in seeking arbitration, by his evading the imposition of sanctions for contempt, and by his interference with the orderly conduct of the administration of the Estate. *Van Ness Townhouses*, 862 F.2d at 759; *Hoxworth*, 980 F.2d at 926-27; *S&H Contractors*, 906 F.2d at 1514.

29. Chung had no right to removal because (a) he was and is actively litigating his claims as plaintiff in the CNMI Superior Court outside of probate, (b) he is not a "defendant" within the meaning of the removal statutes, (c) counterclaim defendants are improper parties to remove a case to federal court and (d) his removal notice was untimely and defective. Under both 28 U.S.C. § 1441 and 9 U.S.C. § 205, the right to removal is vested exclusively in the "defendant or defendants in an action." The right of removal is conferred only on a defendant who has *not* submitted himself to the jurisdiction of the court from which he seeks removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 107-08 (1941); *Estate of Spragins v. Citizens Nat'l Bank*, 563 F. Supp. 424, 428 (N.D. Miss. 1983) (despite Estate's affirmative defenses and counterclaims, Bank seeking to enforce its alleged contractual rights against the Estate "must be considered as having the status of 'plaintiff' and is not entitled to remove the action"); *Mignogna v. Sair Aviation, Inc.*, 679 F. Supp. 184, 189 (N.D.N.Y. 1988) ("a 'defendant' under § 1441 is someone who has involuntarily been hauled into court and who has 'never voluntarily submitted itself to the jurisdiction of the state Court' ").

30. Chung's "notice of removal" purports to remove only a portion of CNMI Probate Court's Civil Action No. 95-626-A; the removal statutes do not permit partial removal. Section 1441(b) of Title 28 U.S.C. forecloses partial removal: "Any *civil action* of which the district courts have original jurisdiction founded on a claim or a right arising under the Constitution, treaties or laws of the United States shall be removable. . . . " [Emphasis added.] Although the statute provides that a "civil action" can be removed, no provision is made for removal of a part of an action. Similarly, 9 U.S.C. § 205 provides that if an "action or proceeding" relates to an arbitration agreement, the defendants "may . . . remove such action or proceeding." No partial removal is thereby permitted. "[T]he phrase 'civil action' in the statute (28 U.S.C. § 1441) 'denotes the entirety of the proceedings in question, not merely' claims or parties. Thus, the removal statute does not countenance the removal of bits and pieces of cases" when new parties have not been added. *Simmons v. California Dep't of Indus. Relations*, 740 F. Supp. 781, 785-86 (E.D. Cal. 1990) (internal citations omitted). This Court reached the same conclusion in interpreting Section 1441(d) of Title 28 U.S.C. in *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095, 1098-99 (9th Cir. 1990) ("Section 1441(d) envisioned removal of the entire action").

31. The District Court lacked subject matter jurisdiction to declare a stay of the contempt proceedings pending in the CNMI Probate Court, whether by direct order or "automatically": (1) Chung's contempt flowed from repeated disobedience of direct court orders, unrelated to any arbitration agreement; (2) Chung did not seek removal of the contempt proceedings; (3) the District

Court did not order removal of the contempt proceedings; (4) under Section 1446(d) of Title 28 U.S.C., a stay applies only with respect to the removed action; (5) removal is permissible only "before trial" (9 U.S.C. § 205), and Chung's contempt had been tried and he had been forced to be in contempt before the notice of removal; (6) Chung did not seek any kind of review, by appeal or by writ, to stay any order that he violated in the CNMI judicial system; (7) Chung was, and continues to be, subject to the CNMI Probate Court's contempt power, even if it were assumed, *arguendo*, that the order was invalid. *Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967); *Howat v. Kansas*, 258 U.S. 181, 189-90 (1922). "The contempt power lies at the core of the administration of a State's judicial system. . . . [F]ederal-court interference with the State's contempt process is 'an offense to the State's interests. . . . ' ") *Juidice v. Vail*, 430 U.S. 327, 335-36 (1977) (citation omitted).

32. The District Court lacked subject matter jurisdiction over any matter in the probate proceedings before the CNMI Probate Court. It is not empowered to compel arbitration of, to stay or otherwise to usurp that Court's exclusive power to administer the Estate, including approving or rejecting claims such as Chung's, to the proceeds of stock and repayment of a loan subject to offset, such as the subject of the Petitioner's cross-claim. "[I]t is important that judges remain free to control the course of proceedings before them and to correct any abuse of those proceedings by, for example, denying a belated motion for arbitration." *Jones Motor Co., v. Chauffeurs Local Union No. 633*, 671 F.2d 38, 43 (1st Cir. 1982). Federal courts are not empowered to administer an estate

or to intervene in probate proceedings in State or Commonwealth courts. *Markham v. Allen*, 326 U.S. 490, 494; *Pufahl v. Parks' Estate*, 299 U.S. 217, 226 (1936) ("[w]here . . . a res has come into the possession and under the control of a state court, one having a right to go into the federal court . . . cannot obtain a judgment or decree entitling him to interfere with the administration of the res by the Court having its possession"); *Rice v. Rice Foundation*, 610 F.2d 471, 474 (7th Cir. 1979). A writ of prohibition is the appropriate remedy from this Court to "confin[e] the inferior court to a lawful exercise of its prescribed jurisdiction." *Guam v. District Court of Guam*, 641 F.2d 816, 820 (9th Cir. 1981).

33. The District Court was without subject matter jurisdiction to compel arbitration or to stay litigation of Chung's own actions against the Estate or the Estate's counterclaims in those lawsuits, or the Estate's separate lawsuits. Those actions were not before the District Court, and they are outside the Court's power to stay litigation or to compel arbitration. 9 U.S.C. § 3 (authorizes "the court in which such suit is pending" to enter a stay of proceedings in front of it). Moreover, Chung's own claims could not have been removed because Chung is deemed a plaintiff, not a defendant in those actions. 28 U.S.C. § 1441(a); 9 U.S.C. § 205.

34. The Anti-Injunction Act foreclosed the District Court from staying proceedings in the CNMI Probate Court "except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (28 U.S.C. § 2283). *Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372, 1378 (9th Cir. 1997) ("Courts must construe the exceptions to the

Anti-Injunction Act narrowly and resolve doubts in favor of letting the state action proceed."). Chung did not meet any of the statutory conditions precedent to warrant issuance of an injunction; the District Court did not specifically order an injunction, but it declared the stay of contempt and of "related" claims by supposed operation of law.

35. The District Court prejudicially erred in refusing to abstain from exercising its jurisdiction (if any), as required by *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

36. Even if the District Court had jurisdiction to entertain Chung's Motion to Compel Arbitration or to Stay Litigation pending in a probate proceeding in CNMI Probate Court, Chung failed to meet his burden of identifying which claims and which parties are subject to arbitration and/or subject to the motion to compel. Chung's failure to identify the relief he was seeking is significant because Petitioner's cross-claim in the CNMI Probate Court asserts four causes of action against five individuals or entities, and Chung has failed to identify which, if any, of those claims for relief are subject to any arbitration agreement. The District Court could only compel arbitration of disputes that the parties seeking to remove had agreed to arbitrate. *Volt Info. Sciences, Inc. v. Board of Trustees*, 489 U.S. 468 (1989).

37. Chung failed to satisfy the FAA's jurisdictional requirement that he demonstrate that Petitioner has refused to arbitrate. 9 U.S.C. § 4. To obtain a stay, petitioner must show that he is "aggrieved by the alleged

failure, neglect or refusal of another to arbitrate. . . . " The Petitioner has not refused to arbitrate. (Exh. 22.)

WHEREFORE Petitioner prays that this Court issue a writ of prohibition and/or mandamus directing vacation of the District Court's Orders removing Chung's cross-claim and unidentified "related claims" from the CNMI Probate Court and declaring the contempt proceedings, proceedings with respect to the "cross-claim" and "related claims" stayed and that this Court direct forthwith remand of all the proceedings in the District Court to the CNMI Probate Court.[2]

Dated: February 11, 1998

Respectfully submitted,

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ESTATE OF LARRY LEE
HILLBLOM

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[2] Filed concurrently herewith is Petitioner's Motion for Leave to File a Brief in Support of its Writ Petition, together with its proposed brief.

CERTIFICATE OF COMPLIANCE

NINTH CIRCUIT RULE 32(e)(4)

Pursuant to Ninth Circuit Rule 32(e)(4), I certify that the Petition for Writ of Prohibition and/or Mandamus of Petitioner Bank of Saipan, as Executor of the Estate of Larry Lee Hillblom, is double-spaced, has a proportionately spaced typeface of 14 points (Times New Roman), and contains 4,136 words.

Dated: February 11, 1998

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HILLBLOM

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rules 21-3 and 28-2.6, Petitioner Bank of Saipan, as Executor of the Estate of Larry Lee Hillblom, certifies that no known related cases are pending in this Court.

Dated: February 11, 1998

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